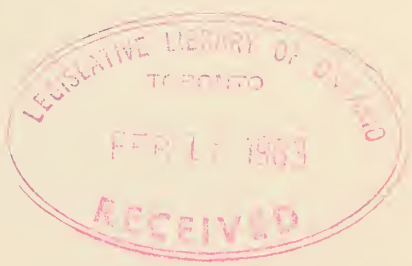

1949

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill N, intituled:
"An Act respecting Bankruptcy"

No. 1
THURSDAY, MARCH 10, 1949

ACTING CHAIRMAN
The Honourable A. K. Hugessen, K.C.

WITNESSES

Honourable Mr. Justice Urquhart, Supreme Court of Ontario.
Mr. H. W. Macdonnell, Legal Secretary, Canadian Manufacturers' Association.
Mr. H. S. T. Piper, Montreal Board of Trade.
Mr. R. Forsyth, Superintendent of Bankruptcy.
Mr. Lee A. Kelley, K.C., the Law Society of Upper Canada.

APPENDICES

A. Observation of The Honourable Mr. Justice Urquhart.
B. Memorandum by the Montreal Board of Trade *re* Operation of Companies' Creditors Arrangement Act, 1933.
C. Recommendations of the Sub-Committee of the Legislation Committee of the Dominion Association of Chartered Accountants.
D. Brief of the Board of Trade of the City of Toronto.
E. Submission of The Canadian Credit Men's Trust Association Limited.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1949

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, 17th February, 1949.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (N), intituled: "An Act respecting Bankruptcy," be now read a second time.

After debate,

The said Bill was read the second time, and—

Referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

32419—1½

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Elie Beauregard, K.C., Chairman.

The Honourable Senators Aseltine, Aylesworth, Sir Allen, Ballantyne, Beaubien, Beauregard, Buchanan, Burchill, Campbell, Copp, Crerar, Daigle, David, Dessureault, Duff, Euler, Fallis, Farris, Gershaw, Gouin, Haig, Hardy, Hayden, Horner, Howard, Hugessen, Jones, Kinley, Lambert, Leger, Mackenzie, Marcotte, McGuire, McKeen, McLean, Moraud, Murdock, Nicol, Paterson, Quinn, Raymond, Robertson, Sinclair, Vien and Wilson.—44.

MINUTES OF PROCEEDINGS

FRIDAY, February 18, 1949.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11 a.m.

Present: The Honourable Senators:—Copp, *Acting Chairman;* Aseltine, Buchanan, Kinley, Lambert, Leger, Quinn, Robertson, Sinclair and Wilson.—10.

In attendance: Mr. J. F. MacNeill, Law Clerk and Parliamentary Counsel.
Bill N, "An Act respecting Bankruptcy," was considered.

After discussion it was resolved to postpone hearings on the Bill until Thursday, March 10, 1949.

The Clerk of the Committee was directed to so advise those witnesses who were heard on a somewhat similar Bill in 1946.

At 11.15 a.m. the Committee adjourned to the call of the Chairman.

Attest.

JOHN A. HINDS,
Clerk of the Committee.

THURSDAY, March 10, 1949.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11 a.m.

Present: The Honourable Senators:—Aseltine, Buchanan, Burchill, Copp, Crerar, Fallis, Gouin, Horner, Howard, Hugessen, Lambert, Leger, Mackenzie, McGuire, McKeen, Paterson, Quinn, Robertson, Sinclair and Wilson.—20.

In attendance: Mr. J. F. MacNeill, Law Clerk and Parliamentary Counsel.

The official reporters of the Senate.

In the absence of the Chairman, and on Motion of the Honourable Senator Robertson, the Honourable Senator Hugessen was elected Acting Chairman.

The consideration of Bill N, "An Act respecting Bankrupty," was resumed.

On Motion of the Honourable Senator Robertson:

It was resolved to report recommending that the Committee be authorized to print 1,000 copies in English and 400 copies in French of the day-to-day proceedings on the Bill, and that Rule 100 be suspended in relation to the said printing.

The Honourable Mr. Justice Urquhart, Supreme Court of Ontario, was heard with respect to the Bill, and filed a brief with the Committee, which was ordered to be printed in the record. (*See* Appendix "A").

Mr. H. W. Macdonnell, Legal Secretary, Canadian Manufacturers Association, read a brief on behalf of his association.

Mr. H. S. T. Piper, representing the Montreal Board of Trade, read a brief, and filed with the Committee a memorandum *re* the operation of the Companies Creditors Arrangement Act 1933, which was ordered to be printed in the record. (*See* Appendix "B")

Mr. R. Forsyth, Superintendent of Bankruptcy, was heard with respect to the Bill.

Mr. Lee A. Kelley, K.C., Ottawa, was heard on behalf of the Law Society of Upper Canada.

Briefs on behalf of:

The Dominion Association of Chartered Accountants (*See* Appendix "C"),

The Board of Trade of the City of Toronto (*See* Appendix "D"), and

The Canadian Credit Men's Trust Association Limited (*See* Appendix "E"), were filed with the Committee,

And were ordered to be printed in the record.

Further consideration of the Bill was postponed until Wednesday, 16th March instant, at 10.30 a.m.

At 1 p.m. the Committee adjourned until Wednesday, 16th March instant, at 10.30 a.m.

Attest.

JOHN A. HINDS,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Thursday, March 10, 1949.

The Standing Committee on Banking and Commerce to whom was referred Bill N, an Act respecting Bankruptcy, met this day at 11 a.m.

Hon. Mr. HUGESSEN in the Chair.

Hon. Mr. ROBERTSON: Honourable senators, before we proceed I have a motion that I should like to put forth. I would move that the committee be authorized to print 1,000 copies in English and 400 copies in French of its day to day proceedings on the Bill N, intituled: "An Act respecting Bankruptcy", and that Rule 100 be suspended in relation to the said printing.

Such a record was kept before and was found to be valuable.

The CHAIRMAN: Gentlemen, the committee has heard the resolution that the committee be authorized to print 1,000 copies in English and 400 copies in French of its day to day proceedings on the Bill N, intituled: "An Act respecting Bankruptcy", and that Rule 100 be suspended in relation to the said printing. Is there any discussion on that motion?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Ladies and gentlemen, there has been placed before me a list of witnesses who desire to be heard in relation to this bill which I understand now comes before us for the first time. Does the committee desire to hear witnesses in relation to this bill or to hear the Superintendent of Bankruptcy explain the bill first? What is the pleasure of the committee?

Hon. Mr. GOUIN: I think that a few words of explanation of the bill might be quite welcome. It is a rather lengthy piece of legislation.

Hon. Mr. LAMBERT: Mr. Chairman, one of the persons present here who was asked to give evidence is Mr. Justice Urquhart. He is serving in the court here and I think it would be a matter of courtesy if he were given an opportunity to speak first so that he could be released to attend to his official duties.

The CHAIRMAN: Is it the pleasure of the committee to hear Mr. Justice Urquhart as the first witness?

Some Hon. SENATORS: Carried.

The CHAIRMAN: We should be very glad to hear from Mr. Justice Urquhart now.

Hon. Mr. Justice GEORGE A. URQUHART, of the Supreme Court of Ontario: Honourable senators, I wish to thank you for the invitation to have an opportunity to speak to you upon this bill. I have gone over this bill with the aid of the Registrar of our Court, who is a man of even greater experience than my eleven years on the bench have afforded me. I have prepared a brief of amendments which I suggest, respectfully, in connection with this bill. (See Appendix A.) I do not propose to go over the amendments in detail, leaving them with you for your consideration. They are in writing and no doubt will be attached to your Minutes of Proceedings of today.

There are some features of the bill that I thought I would refer to, that particularly interest me. May I say at the outset that I am in agreement with almost the whole of the bill and I want to compliment the Superintendent of Bankruptcy on the admirable manner in which he has revised his legisla-

tion which extends, with amendments, over thirty years. The bill has been greatly simplified and there may or may not be, according to the views of various people, dangers in over-simplification. I do not myself notice many dangers in the bill but you will realize there has been a body of decision built up in Canada now for thirty years on the wording of the present legislation together with the amendments which it has accumulated during the past years. I just point this out for your consideration. There are lawyers among you and probably you will notice where, in your opinion, some old section has been simplified perhaps too much. I may say that I was not aware, in running through the bill, of any pitfalls except in one or two places that I shall mention.

In my brief I mention, on page 4, a point which I do not think is adequately dealt with in the bill, and that is the fact that trustees are often dilatory. The Superintendent of Bankruptcy will have all the details, but we have had in Ontario men who were simply dilatory and their estates got into arrears. Therefore, I would suggest that some amendment be made to either Section 12 (2) or Section 69 or Section 107. I think in one of those places I have outlined a proposed amendment. I think you will find there that if the trustee, say, after two or three years, has not wound up his estate, some teeth should be put into the Act. There are no teeth in the Act at the present time which I can see to bring him before the court or before the creditors to make him wind up his estate with some sort of speed.

The CHAIRMAN: You have mentioned a memorandum. Did you prepare a memorandum?

Mr. Justice URQUHART: I have prepared this memorandum which I will file with you.

The CHAIRMAN: Would the committee desire to have copies mimeographed and circulated to them of Mr. Justice Urquhart's memorandum?

Mr. Justice URQUHART: When I last appeared here two years ago my memorandum at that time was included as part of the record.

Then also at page 4 in my memorandum, near the bottom, there is a question on Section 21(6). That section, although it is apparently comprehensive, in my opinion does not provide for an adjudication which I think on the state of the authorities should be definitely provided for as in the present section of the Act. I would suggest, therefore, that 21(6) be amended by putting in these words to replace what is there now: "At the hearing the court shall require proof of the facts alleged in the petition and of the service of the petition and, if satisfied with the proof, may adjudge the debtor a bankrupt and in pursuance of the petition make an order, in this Act called a receiving order". Section 4 (6) of the present act says that if the court is satisfied with the proof it may adjudge the debtor a bankrupt, and to get the benefits of our decisions it is important that that question should be provided for in somewhat the manner that I have indicated.

There is a proposal in the bill to exempt a wage earner who does not earn more than $2,500 a year. In the present act the amount is $1,500, and my opinion is that it should remain at that figure, in view of the fact that we are now, we hope, at the peak of wages. I think the increase in the amount there is of some danger. That is referred to in my memorandum at the top of page 6.

I come now to section 64, the priorities section of the act. I have gone over this with some care and put some thought on it, and I advocate the retention of the present section 64. I know that Mr. Pickup, who is representing the Bankers' Association here, advocates the same thing. We spent some time together this morning going over the bill and I understand his views on the matter. I am in accord with the views which he will present to you, so I do not think I need say more than I would prefer the present section 64 to the proposed section 64 in the bill. I think we would be getting on dangerous ground if we abandoned what has been established now for more than thirty years.

On page 9 of my memorandum I refer to certain priorities covered by section 95 of the bill, that is at page 63 of the bill. With some variations these priorities are practically settled in a case which I argued before the Supreme Court of Canada when I was at the bar, about fifteen years ago, the General Fireproofing case. You will see that the first priority is funeral and testamentary expenses. That is all right. The next is the costs of administration and that is all right. Paragraphs (*c*) and (*d*) are all right also, but paragraph (*e*) gives priority to municipal taxes. That does not mean the land tax, which is a lien upon the land, but it means Hydro rates, business taxes and other municipal taxes. I know that others do not agree with me on this, but I think municipal taxes should be behind the landlord for rent and behind the fees and costs in the realization of the estate, because the estate must be realized and it is unfair to the trustees that they should take their chances behind the Hydro and other rates. If Hydro rates are not paid for a month the city can shut off the current, and so while the city has not a lien on the land for such rates it has its remedy. I think these municipal taxes should be behind claims resulting from injuries to employees of the bankrupt to which the provisions of the Workmen's Compensation Act do not apply. Personally, I would recommend that these municipal taxes be included in clause (*j*), claims of the Crown in right of Canada or of any province *pari passu*, or of any municipality *pari passu* in cases where the tax is not a lien on the land.

Then I would like to say a little about section 127 of the bill. As I said in my testimony two years ago, I am opposed to automatic discharge of the bankrupt, and in my brief I have set out what I said at that time. Just before that time I was consulted by American authorities, and they informed me that this scheme, which is an American scheme, had not worked out satisfactorily in the United States. I am subject to correction by my very good friend the Superintendent, who may have later information on this. I would suggest that instead of providing for the automatic discharge we should have a provision requiring the trustee, as a condition precedent to his discharge, to file what is now the report on the conduct of the bankrupt, so that we would have that on record in the court at all times, and then leave it to the bankrupt to ask for his discharge. A good many bankrupts do not seem to want to be discharged, and why we should make their discharge automatic, I do not know.

On page 12 of my memorandum I point out that under section 135 of the present Act alimentary debts, so-called survive the bankruptcy. In the interpretation section of the Act "alimentary debt" is defined as "a debt incurred for necessaries or maintenance". I think that a debt incurred for necessaries of life or maintenance should survive the bankruptcy. However, that is not important, and there is a division of opinion on it.

Then there is a point which though it may not be substantial is rather important, and it would please me very much if it were cleared up. Section 140 (1), which vests courts with jurisdiction, refers in paragraph (*e*) to our court in Ontario as the High Court of Justice. There are two divisions of the Supreme Court of Ontario: the Court of Appeal and the High Court of Justice. I think it would be safer if paragraph (*e*) read:

> (*e*) in the province of Ontario, the Supreme Court of Ontario, as administered by the High Court of Justice for the province.

That may be a hypercritical suggestion, but I think it is well to be on the safe side, so that no lawyer could raise the technical point that the wrong court is named. What I am suggesting may be a distinction without a difference.

As to examinations of bankrupts and others, section 120, I believe that the examination of bankrupts should be authorized to be read in every proceeding in which the bankrupt is concerned. I have before me now a reserved judgment in which I am really taking the bull by the horns and reading the examination,

but another court may think that I have taken too much on myself. In my opinion it is important that the examination should be read, and I think that section 120 might be broadened a little.

There is a change made by the bill which may be an error, but if so it is a good error. Section 149 (1) (*h*) empowers the registrar "to hear and determine any matter relating to proofs of claims whether or not opposed". In the present act the registrar is empowered to hear and determine appeals from the decision of a trustee where the claim does not exceed $500. I think that this proposed amendment is a very good one. The Registrar should hear disputes as to the claims of creditors. There is, of course, an appeal to the bankruptcy judge, who, in the province of Ontario I have the honour to be; and a further appeal to the Court of Appeal. Though the Registrar is not a full judicial official, I think he should have that power under the act.

Judge FORSYTH: Is there not an amendment?

Mr. Justice URQUHART: Perhaps, as Mr. Forsyth suggests, there is some amendment.

The CHAIRMAN: To hear and determine matters . . .

Mr. Justice URQUHART: I am just talking about the question of the $500 limit; in the other act a limit of $500 was provided. That provision meets with my approval, as does the whole bill. I think it is splendidly drawn. There are those particular matters which concern me, and I have referred to a number of others in my brief.

May I say that I have examined this bill with the eye of the administration of justice, and not with the eye of the bankrupt. My suggestion now is twofold: first, to see that the administration of the act operates as smoothly as possible, and secondly, that no further duties, unless they are absolutely necessary, should be imposed upon the Court. I do not know whether any of the groups represented here wish to propose that further duties be imposed upon the Court. While I do not object to the work, should any such suggestions be made, I should like to be heard further. No such proposals have come to me, so perhaps my remarks are gratuitous. My intention was, Mr. Chairman, to present a running comment on my brief. Now if there are any questions to be asked I shall do my best to answer them.

Hon. Mr. ASELTINE: Perhaps after we read your brief we may wish to hear you further.

Mr. Justice URQUHART: I will be in the city all day today and part of tomorrow, at least.

Hon. Mr. ASELTINE: When we adjourn today it is unlikely that we will meet again before next Wednesday.

Mr. Justice URQUHART: It would be difficult for me to come to Ottawa next week, but should further points come up I would be pleased to answer promptly by correspondence.

Hon. Mr. ASELTINE: I imagine that it will be some weeks before this bill is finally disposed of.

Mr. Justice URQUHART: With deference, I would say that you should have no difficulty in dealing with this legislation.

Hon. Mr. HOWARD: May I ask a question, Mr. Chairman, as to the matter discussed a few minutes ago? Section 12 (2), at page 19 of the bill, reads as follows:

> Where an estate has not been fully administered within three years after the bankruptcy, the trustee shall so report to the court within three months thereafter and the court shall make such order as it may see fit to expedite the administration.

Is that not strong enough?

Mr. Justice URQUHART: Yes, that is splendid. I must apologize for overlooking that provision, but I received copies of the proposed bill last summer, and some revisions have been made.

Hon. Mr. HOWARD: That subsection gives the court entire discretion.

Mr. Justice URQUHART: Yes; I am glad it is there.

The CHAIRMAN: Does any other member of the committee wish to take advantage of Mr. Justice Urquhart's suggestion, and ask him further questions.

Mr. Justice URQUHART: May I just say with respect to section 64, which will be dealt with by Mr. Pickup in a more general way, that I have two observations to make. I am opposed to the proving of what is called "concurrent intent". Mr. Pickup is probably not in agreement with me on that point. My second observation is that when a person makes a concurrent advance and takes security, it should be regarded as a good advance. For example, a man who is near bankruptcy may go to the bank and ask for a loan of $3,000 for his business. The bank, not knowing the customer's financial position takes a mortgage or a chattel mortgage on his property and lends him the money. The money having been lent on a quid pro quo basis, the debt should be honoured in some way. The situation is different when the bank or other creditor go to a person in financial difficulties and say to him, "You owe me a lot of money; now give me a mortgage on everything you have, and forget about the other creditors." As to the doctrine of concurrent intent, I think it is provided in this subsection that if a debtor has intended to give preference to a certain creditor, the transaction between them is vitiated. That question has been a bone of contention in law as long as I can remember—and my memory is older than the Bankruptcy Act—and it has been productive of many decisions. That is the reason I think that section 64 should be retained in its present form. In that way we will know exactly where we stand. I do not propose to go into the law on it, but there have been a great many decisions on the question known colloquially as fraudulent preference.

Hon. Mr. HOWARD: Mr. Chairman, do you require a motion to include the brief in the record?

The CHAIRMAN: Yes.

Hon. Mr. HOWARD: I would so move.

The CHAIRMAN: Senator Howard has moved that Mr. Justice Urquhart's brief be incorporated in this morning's proceedings.

Some Hon. SENATORS: Carried.

The CHAIRMAN: If there are no further questions to be asked of Mr. Justice Urquhart it remains only for me on behalf of the committee to thank him most sincerely for giving us the benefit of his experience and judgment on this bill. Thank you very much, my lord.

How does the committee now wish to proceed? We have the names of a number of witnesses who are appearing on behalf of various organizations and who I assume would wish to discuss various details of the bill. It occurred to me that because this legislation is new, that the superintendent should give us a brief explanation of the bill before we hear any other witnesses.

Some Hon. SENATORS: Hear, hear.

The CHAIRMAN: It does seem to me that we could proceed logically in that way.

Hon. Mr. HOWARD: Perhaps some of the people who are here today would not wish to come back.

The CHAIRMAN: That is possible. I have before me the names of a half a dozen organizations who would like to be heard. We will be sitting much beyond one o'clock today, and I understand that when we adjourn we will stand

adjourned until 10.30 on Wednesday morning next. It is therefore quite evident that we will not be able to hear nearly all of the witnesses now before us. I should like the guidance of the committee in this respect.

Hon. Mr. McKeen: Are there many witnesses from out of town who would be inconvenienced by having to return?

The Chairman: Substantially all the witnesses are from out of town. I shall just read you their names and the organizations represented. They are: Canadian Bankers' Association, Mr. J. W. Pickup, K.C., Toronto; Dominion Association of Chartered Accountants, Mr. F. E. H. Gates, C.A., and Mr. Melville Pierce, Assistant Secretary, Montreal; Law Society of Upper Canada, Mr. Lee A. Kelley, K.C., Ottawa; Montreal Board of Trade, Mr. H. S. T. Piper, Montreal; Toronto Board of Trade; Canadian Credit Men's Trust Association Ltd., a representative from Toronto.

Hon. Mr. McKeen: Would it not be possible for us to meet this afternoon after the house rises, rather than bring these witnesses back?

The Chairman: Well, that I don't know. Then there is the Canadian Manufacturers Association as well.

Mr. H. W. Macdonnell: Yes, I am here for the Canadian Manufacturers Association. We should like to be heard, if possible. I have a very short statement.

The Chairman: Do the committee feel that we should proceed now with the out-of-town witnesses?

Hon. Mr. McKeen: I would think so, Mr. Chairman.

The Chairman: Would the committee now like to hear the first witness I have on the list,—Mr. Pickup, representing the Canadian Bankers Association?

Hon. Mr. Aseltine: How long will he take?

Mr. Pickup: I shall take a little time, but I will try not to be longer than I think I should be.

The Chairman: I think the committee should realize that this is a very complicated bill, and the witnesses may have a good deal to say on some parts of it; also there may be a number of questions by members of the committee. I do not think we should try to hurry the witnesses, even for the sake of meeting the convenience of those who are from out of town.

Hon. Mr. McKeen: The representative of the Canadian Manufacturers Association said their presentation would be a very short one. We could take that first.

The Chairman: Would the committee prefer to hear Mr. Macdonnell on behalf of the Canadian Manufacturers Association?

Hon. Mr. Lambert: I think it advisable. He could run until 1 o'clock.

Mr. H. W. Macdonnell: The Canadian Manufacturers Association welcome the opportunity which has been given it of studying the proposed new Bankruptcy Bill, and appreciate the procedure whereby a bill on Bankruptcy was presented in the Senate last year, but held over to permit study by interested groups, thus giving ample time for such study.

The Association has studied the former bill, and has now studied the present Bill N. It respectfully submits the following observations and suggestions on this bill:

1. Elimination of Custodian, Sections 6 and 21 (9).

The Association approves of the elimination of the custodian in bankrupt estates, recognizing that almost invariably the custodian is confirmed as a trustee. This step therefore eliminates unnecessary procedure. However, the fact of having a custodian gave the prospective trustee an opportunity to consider

whether he should take on the bankrupt's estate. The elimination of the office of custodian, and the new provision of section 6 (4) making it obligatory for a trustee to continue his duties until relieved thereof, make it desirable that section 6 should be amended to provide that the trustee may withdraw up to the time of the first meeting of the creditors.

The Association suggests such amendment should be made to section 6.

2. Action by Trustee before first meeting of Creditors, Section 8(8).

It is suggested that at the end of subsection 8 of section 8, the following words be added:— "and provided that he shall at the first meeting of creditors obtain the approval of the creditors and if such approval is not obtained, he shall be entitled to costs and expenses of the action if the court is satisfied that he acted reasonably and in good faith".

The Association feels that it is desirable in the interests of the creditors that the trustee be required to obtain the approval of the creditors for action taken prior to the first meeting of creditors. However, in any case, if the trustee acted reasonably and in good faith he should be entitled to his costs and expenses. This provision would ensure that the creditors do not suffer as a result of unreasonable action by the trustee.

3. Proceedings by Trustee in Emergency, Section 8 (8).

It is proposed that subsection 9 of section 8 be amended by adding at the end the following words: "and provided that he shall as soon as possible obtain the approval of the inspectors and that if such approval is not obtained, he shall be entitled to costs and expenses if the court is satisfied that he acted reasonably and in good faith."

It is felt that the trustees should be relieved of costs and expenses only in respect of such legal proceedings and actions taken in an emergency as are taken reasonably and in good faith. This suggested change corresponds to the amendment proposed for the previous subsection, and is likewise designed to safeguard the interests of creditors.

4. Trustee's Separate Account, Section 9 (3).

It is suggested that the word "trust" in line 2 is unnecessary and should be deleted, so that the phrase would read "in a separate account."

It is suggested that the word "other" in the 6th line between "and" and "charges" should be deleted because dividends are not charges, and therefore could not be "other" charges.

5. Payments Made by Trustee, Section 9 (4).

It is proposed that this subsection reading: "all payments made by a trustee shall be made by cheque drawn on the estate account" should be deleted.

This provision would require even petty cash payments to be made by cheque. The matter is sufficiently covered by a provision requiring the deposit in a separate account of all moneys belonging to the estate.

6. Trustee Carrying on the Business of the Bankrupt, Section 10 (*c*).

It is proposed that the words "with a view to an early winding-up" be added after the word "estate" in the third line of the paragraph.

It is felt that the trustee should not be encouraged to carry on the business indefinitely but any work of administration done by him should be with a view to an early winding-up.

7. Non-compliance with Bulk Sales Act an act of bankruptcy. Section 20.

It is recommended that Paragraph (*h*) of the present Act reading: "if he makes any bulk sale of his goods without complying with the provisions of any Bulk Sales Act applicable to such goods in force in the province within which he carries on business or within which such goods are at the time of such

bulk sale," be included as an additional paragraph to section 20. It is realized that a debtor who does this will probably have committed some other act of bankruptcy designated in the present bill, but such other act may be much more difficult to prove than the failure to comply with the provisions of the governing provincial Bulk Sales Act. Therefore, failure to comply with such legislation should be designated as an act of bankruptcy in the present bill.

Hon. Mr. ASELTINE: You are referring to the Bulk Sales Acts of the different provinces?

Mr. MACDONNELL: That is it, sir.

8. Persons Not Covered by the Act, Section 25.

It is proposed that section 25 be amended by substituting the word "twenty-five" for the word "twenty-four" in the first line. It is also suggested that section 25 be placed after section 26, in other words, that section 26 be re-numbered as section 25, and section 25 be re-numbered as section 26.

The purpose of the proposed amendment is to exclude from recourse to voluntary bankruptcy, the persons who are excluded from the application of the receiving order under section 25.

It is not considered just and equitable that persons against whom receiving orders cannot be filed, should be able to avail themselves of bankruptcy proceedings where it suits their purpose, regardless of whether it suits their creditors.

9. If no Licensed Trustee is Willing to Act, Section 26 (5).

It is recommended that the words "or where the trustee withdraws" be inserted after the word "act" in the second line of this subsection so that the subsection shall read as follows:

> Where the official receiver is unable to find a licensed trustee who is willing to act or where the trustee withdraws, he shall, after giving the bankrupt seven days' notice of his intention, cancel the assignment.

This is to provide for the carrying out of the procedure suggested in Item 1 of this submission for allowing the trustee to withdraw up to the time of the first meeting of creditors because without such amendment as proposed, the official receiver in the case of a trustee withdrawing, might not be able to cancel the assignment.

10. Proposals, Section 27.

The Association approves of this section which brings back into bankruptcy practice, the right of a bankrupt person to make a proposal to his creditors without going into bankruptcy, and without thereby being designated a bankrupt. It is well known that, generally speaking, in a case where a proposal is made before bankruptcy, much more is realized by the creditors than would be the case if the debtor was declared a bankrupt. Almost always, the assets of a bankrupt estate depreciate a considerable amount due to the fact that it is a bankrupt estate, and even if the business of the bankrupt is carried on, it is very difficult to receive full value for the goods or services which are sold or furnished.

11. Protection of Trustee from Personal Liability in Certain Cases, Section 49.

It is suggested that in the sixth line of section 49, the word "unregistered" be deleted, and after the word "charge" in the same line, the following words be inserted:— "not registered or not protected against creditors under the law of the province".

The reason for this is that some provinces such as Ontario, permit liens on manufactured goods to continue valid without registration provided that the name and address of the vendor are marked thereon. With respect to property which is subject to a valid but unregistered lien, under the present

wording of the section, the trustee is not personally liable for any loss or damage. This cuts down the rights of lienholders holding such liens. A competent trustee would be familiar with the Conditional Sales Act of his province, and should take notice of all liens which are properly protected. It may be that in such provinces, the trustees will be put to considerable trouble in making the necessary inquiry but this is preferable to valid lienholders being deprived of their rights as secured creditors and reduced to the status of ordinary creditors.

The next is section 64, Unfair Preference. The association agrees with the views expressed by Mr. Justice Urquhart.

It is submitted that section 64 should be replaced by something like former section 64, in order that the intent of the bankrupt to prefer the creditor, should be a condition precedent to the preference being declared null and void. It is realized that some provinces have interpreted the present section 64 as providing that there must be concurrent intent, but with a slight re-wording of section 64 of the present Act, such interpretation could be guarded against.

It is felt that if every transaction entered into within three months of bankruptcy, regardless of the intent of the bankrupt, is to be void, then few creditors will be found to come to the aid of a debtor in financial difficulties, because if they give the debtor any aid based on surety or guarantee, such surety or guarantee will be worthless if the debtor goes bankrupt within three months. There have been cases where debtors have kept out of bankruptcy by aid from their creditors. Therefore, the effect of the section, as now worded, would seem to make for more unnecessary bankruptcies.

The next section 95, Priorities.

The association approves this section in that it lays down a comprehensive scheme of priorities. This should clarify this contentious matter, and should reduce the amount of litigation. The higher priority given to the ordinary trade creditor is welcomed. It is the trade creditors that usually institute the proceedings, and heretofore, too often, they have not realized any worthwhile dividends as a result of their efforts.

The CHAIRMAN: Have you any comments to make on Mr. Justice Urquhart's suggestion about putting unprivileged municipal taxes lower in rank than any claims of the landlord and any indebtedness under Workmen's Compensation Acts?

Mr. MACDONNELL: No, sir. I have not heard that until this morning. The next is section 114, Summary Administration.

The association approves of this new procedure for the administration of a bankrupt person's estate with few assets. It appears to fill a gap in bankruptcy procedure. It serves to permit a bankrupt person to obtain his discharge and start over again. At the same time, it provides for an inexpensive administration of the estate.

The next is section 127, Discharge of Bankrupt.

The association has considered the new provision under section 127 respecting the discharge of a bankrupt, and considers that it is an improvement.

The final section is 149, Powers of Registrar.

The association approves of the additional statutory powers given to the registrar, some of which have been exercised by him without specific legislative sanction, as it would appear that the new powers given should expedite proceedings and cut down the expense which court hearings would entail. However, these additional powers will only be an improvement if the registrars who are appointed to exercise them possess the necessary high qualifications.

The CHAIRMAN: Have the members of the committee any questions to ask Mr. Macdonnell? If there are no questions to put to him I have a note before me that Mr. Piper of the Montreal Board of Trade would only take about ten minutes. Would the committee like to hear Mr. Piper now?

Some Hon. Senators: Carried.

Mr. H. S. T. Piper, of the Montreal Board of Trade: Mr. Chairman and honourable senators, I have before me copies of the submission of the Montreal Board of Trade which might be distributed for the convenience of the members of the committee.

The Montreal Board of Trade for many years has made a special study of legislation concerning insolvency and bankruptcy. During the war there was a marked decrease in commercial failures but since 1945 the number and the liabilities involved have shown a definite increase. In 1948 according to statistics prepared by Dun & Bradstreet of Canada Limited, the number of commercial failures in Canada was 493 with liabilities $11,755,000, the highest amount since 1935. Of the 1948 failures, 139 or 28·2 per cent took place in the Montreal area. Their liabilities totalled $3,038,000, representing 25·8 per cent of the whole. In 1947 the percentages for Montreal were 40·5 per cent of the total number and 45·9 per cent of the total liabilities. In that year failures in Canada totalled 304 in number and $7,228,000 in liabilities. These statistics will explain perhaps the unusual and peculiar interest in insolvency matters of The Montreal Board of Trade. In the years 1937 and 1938 particular attention was given bankruptcy legislation in general by this Board and by other interested bodies and groups. As a result, the late Mr. W. J. Reilley, K.C., then Superintendent of Bankruptcy, called into conference on December 5, 1938, a representative group of those interested. At that meeting it was clear that existing legislation required amendment and co-ordination.

The war intervened but in 1946 as a result of the 1938 conference, Bill A5 was submitted. It was designed to consolidate all insolvency legislation and reflected the experience and judgment of Mr. Reilley arising from his long service as Superintendent of Bankruptcy. This Board pays tribute to his administration and particularly to the general improvement in the conduct of bankruptcy proceedings which resulted from his supervision. Because of wide differences of opinion expressed in the evidence given before this Committee on certain provisions of Bill A5, it was not proceeded with. Bill N replaces it.

The Montreal Board of Trade regards Bill N as a major step forward in bankruptcy legislation and merits general approval. In particular it welcomes the most important and fundamental change projected in Part III—Proposals, a change long advocated by this Board, i.e., the restoration of the right of debtors, individuals and corporations alike, to make a proposal to creditors before as well as after bankruptcy, but in either case subject to the control and supervision provided for in the Bankruptcy Act. This provision was contained in the Bankruptcy Act 1919, but was removed by amendment in 1923 due to abuses which obtained before trustees were required to be licensed and before the office of Superintendent was created.

In view of the changes contemplated in Part III, this board is of the opinion that if so enacted, Bill N contains the essential requirements for incorporated companies, partnerships and individuals alike, to make proposals before bankruptcy involving compositions, extensions of time or other arrangements with creditors or any class of them.

It would seem therefore that The Companies' Creditors Arrangement Act 1933 would then become unnecessary and should either be repealed or amended to limit its application only to corporations where there is an outstanding issue of bonds or debentures issued under a trust deed running in favour of a trustee acting for security-holders and where a compromise or arrangement is proposed between such companies and the holders of such issues.

The Montreal Board of Trade is of the opinion that Section 38 (2) of Bill N, concerning the Companies' Creditors Arrangement Act 1933, should not stand unless that Act is either amended, or repealed altogether.

The abuses which have taken place and which will continue as long as the Companies' Creditors Arrangement Act, 1933 exists, are well known in commercial circles.

They were referred to at length in evidence given before the Standing Committee on Banking and Commerce of the House of Commons on 7th June 1938, when that Committee had before it Bill No. 26, an act to repeal the Companies' Creditors Arrangement Act, 1933, which was later withdrawn.

The grave abuses which have occurred and which will recur under the operation of this act in its present form, arise from its many weaknesses, some of which are recited in a special memorandum which this board has prepared. In view of the pressure of time, Mr. Chairman, I will not read this memorandum, but it is appended to this submission.

It is clear therefore that as long as the Companies' Creditors Arrangement Act, 1933 remains on the statute books or is not restricted in its operations in the manner suggested, companies which for obvious reasons wish to evade the supervision and control provided by the Bankruptcy Act, will attempt to carry through their schemes under the wide-open and loose provisions of the other.

The Montreal Board of Trade, whilst approving in general the revision of the Bankruptcy Act contained in Bill N, nevertheless feels that complementary legislation is required to remove the serious objections referred to arising from the operation of the Companies' Creditors Arrangement Act, 1933.

Bill N greatly simplifies, clarifies, broadens and strengthens the bankruptcy law. Subject to the reservations and representations herein submitted, the Montreal Board of Trade respectfully recommends approval of the bill as a progressive step in legislation relating to commerce and the casualties thereof.

(For memorandum from the Montreal Board of Trade *re* operation of Companies' Creditors Arrangement Act, 1933, see Appendix B to today's report.)

The CHAIRMAN: Thank you, Mr. Piper. Has any member of the Committee any questions to ask Mr. Piper about his memorandum? If not, we will pass on.

The Dominion Association of Chartered Accountants, represented here by Mr. Gates and Mr. Pierce, has prepared a memorandum, and in view of the lateness of the hour it is suggested that the memorandum should be filed now and circulated among honourable members. Mr. Gates would be available next Wednesday when the Committee reconvenes, and he could then answer questions on the memorandum.

Hon. Mr. McKEEN: Mr. Chairman, have you received any other memorandum? If so, I would suggest that the same procedure be followed with respect to them.

The CHAIRMAN: Is the Committee willing that the memorandum of the Dominion Association of Chartered Accountants be filed and copies circulated?

Hon. Mr. ASELTINE: Provided that we have an opportunity later on to ask questions about it.

The CHAIRMAN: Yes, Mr. Gates, who represents the association, will be here next Wednesday morning to answer any questions.

Mr. GATES: Here are a number of copies of our memorandum, Mr. Chairman. I do not know whether there are sufficient copies for all members of the Committee. (See Appendix C.)

The CHAIRMAN: Are there any other persons present who desire to file submissions this morning, subject to being questioned about them at the next meeting?

A REPRESENTATIVE: Mr. Chairman, speaking for the Board of Trade of the city of Toronto, I would point out that we forwarded a number of copies of our brief to the Committee, and I presume the Clerk of the Committee has them. (See Appendix D).

A REPRESENTATIVE: Mr. Chairman, I represent the Canadian Credit Men's Trust Association, which filed a memorandum with the Committee. (See Appendix E.)

Hon. Mr. ASELTINE: Are there enough copies of these memoranda for distribution among members of the Committee?

Hon. Mr. LEGER: I think these should be printed in the record.

The CHAIRMAN: We should have a motion to that effect.

Hon. Mr. LEGER: I move that the memoranda be printed in the record.

The motion was agreed to.

JUDGE FORSYTH: Mr. Chairman, I have received copies of these memoranda and considered every suggested amendment. Whenever I rejected a proposed amendment I had some reason for doing so, and I prepared a compendium of my reasons in every instance.

Hon. Mr. McKEEN: I think that should be filed too.

Hon. Mr. ASELTINE: Mr. Chairman, will the printed record of this morning's proceedings, including these memoranda, be ready next Wednesday morning?

The CHAIRMAN: The committee knows how over-burdened the Printing Bureau is.

Hon. Mr. ASELTINE: It will not be much use for us to meet next Wednesday morning if we have not had an opportunity to look over these memoranda.

The CHAIRMAN: Mr. Pickup, whose evidence will be fairly long, will be a witness next Wednesday. Then there is Mr. Kelley, who represents the Law Society of Upper Canada. His home is in Ottawa, so I suppose he would be available next Wednesday, if required.

Mr. KELLEY: Mr. Chairman, Mr. Justice Urquhart has pretty well made the same submissions that the Law Society of Upper Canada asked me to bring forward. I am, of course, completely at your disposal, but if you wish I could run over the Law Society's points in a few minutes.

The CHAIRMAN: Would the committee like to hear Mr. Kelley?

Hon. Mr. ASELTINE: Agreed.

Mr. LEE A. KELLEY, K.C.: Mr. Chairman, since I came here this morning I was handed a memorandum from the Law Society of Upper Canada asking me to express on its behalf entire concurrence in the submissions on page 4 of Mr. Justice Urquhart's brief, with respect to section 21 (1) (*a*) of the bill. That is, we think that a creditor or creditors should be able to file a bankruptcy petition where the amount of the debt or debts is not less than $500, which is the amount specified in the present Act. In the bill the amount is increased to $1,000.

I am also asked to say that the society approves in principle the brief of the Board of Trade of the City of Toronto, as well as the rest of Mr. Justice Urquhart's brief. One of the sections in which the Law Society is interested is section 83 (1). It will be recalled that under the Act no one could prove a bankruptcy for unliquidated damages unless the claim arose through contracts, breach of trust or through a promise. Now, in the bill, this has been very much widened, so that a matter arising in tort or from negligence would be within the purview of section 83 of the bill.

Hon. Mr. LEGER: Do you mean after judgment or before judgment?

Mr. KELLEY: Before judgment, or before settlement, sir. Suppose, for instance, that an action in negligence was taken and that prior to judgment or settlement a bankruptcy occurred, that claim could be proven under this bill.

In section 144 (8), on page 88 of the bill, it is provided that the bankruptcy court may direct any issue to be tried or inquiry to be made by any judge or

officer of any of the courts of the province. No provision is made for trial by jury, and since the bill has been widened to encompass negligence claims the Law Society suggests that this section should be broadened to permit trial by jury to be had, so that a plaintiff would not be deprived of the right which he ordinarily would have had if the bankruptcy had not intervened.

Hon. Mr. LEGER: Would the trial by jury take place in the usual way?

Mr. KELLEY: Yes. I understand from my friend Judge Forsyth that his objection to trial by jury is because of the delay which might ensue, and prevent estates being wound up as quickly as had the trial taken place before a judge alone. I would point out that most of these trials would take place in larger centres, where there are nearly as many Assizes for the trial of cases by jury as for trials by judge alone.

Hon. Mr. ASELTINE: That is correct.

Mr. KELLEY: Secondly, I would ask the committee to consider the ancient right of any subject to have his case tried by his peers or by a jury. That is a very ancient right and even at the risk of a slight delay the Bar Society feels that right should not be taken away from a subject merely because bankruptcy intervenes.

I shall deal very quickly with the next point, because Mr. Justice Urquhart has covered it in his brief. It has to do with the automatic application for discharge upon assignment being made. The Bar Society feels that it is not in the public interest to allow that provision to remain. It is felt that the bankrupt should make his own application.

The CHAIRMAN: What section are you dealing with, Mr. Kelley?

Mr. KELLEY: I am dealing with section 127. Previously, as you know, the bankrupt had to, after proceedings were completed, make an application for his discharge. This section changes that procedure entirely and the application for discharge becomes automatic and puts the onus on the trustee to apply for and take out an appointment for the bankrupt's discharge. We feel, as I say, that that is against public policy. One can cater, perhaps, too much to the debtor; the law over the years has undoubtedly leaned in favour of the debtor. We quite agree that his rehabilitation is an absolute essential for the business life of Canada, but on the other hand, I would point out, in reply to what I believe is the position of the superintendent, that a lot of debtors do not know that they can apply for discharge—

Hon. Mr. LEGER: But they do not apply even when they do know that they can.

Mr. KELLEY: A great many never apply. That could be corrected by making it incumbent upon the trustee in bankruptcy, before discharge, to send a notice to the bankrupt advising him of his right to apply at any time. With respect to section 128 which provides for the filing of a report by the trustee in bankruptcy of the conduct of the bankrupt, the manner in which he has handled himself and as to whether the bankruptcy appears to be an honest or a dishonest one, we feel that should be continued. That report could still be filed, and as Mr. Justice Urquhart said, left in the court. Then at any time the bankrupt wishes to apply for discharge, that information is on file and available to the court. We do feel that the onus should be on the bankrupt to apply for his discharge.

Mr. Justice Urquhart referred to the terminology in section 140 (1) (*e*), and suggested that "High Court of Justice" should read "Supreme Court of Ontario". For the purpose of the record I would call attention to section 144 (1) which reads:

> Every court shall have a seal describing the court, and judicial notice shall be taken of the seal and of the signature of the judge or registrar of any such court in all legal proceedings.

As that applies to Ontario, the only court which has a seal is the Supreme Court of Ontario, which is covered by section 10 of the Judicature Act. Not to make a change would lead to an inconsistency, and that court which has no seal could not comply with section 144 (1).

A further point with which I wish to deal is that of legal costs,—

Hon. Mr. ASELTINE: That is very important.

Mr. KELLEY: —which is section 155 of the bill. Subsection 7 of that section as presently drafted, makes an allowance in respect of costs of an amount not to exceed ten per cent, which amount is based on the sum received by the trustee less what he may pay to secured creditors. The result is that whatever is required for the secured creditors is deducted before the solicitors' costs of ten per cent can be arrived at. We would point out that the total of the secured creditors' claims sometimes amounts to a good deal, which rather complicates matters. May I interject a personal note? I am interested in a bankruptcy here in Ottawa at the present time which involves a great many of the veterans' homes erected near the Isolation Hospital. I would venture to say that as solicitor for the estate I have spent almost three-quarters of my time advising the trustee in connection with the rights of the mortgagees lienholders and so on. It does seem unfair that the solicitor should be obliged to advise the trustee in this way when, by the time the estate is wound up, the greater part will have to be paid over to secured creditors. In other words, I will have spent the greater part of my time advising in matters from which I will receive no benefit, because of the amount of the secured creditors' claims.

Judge FORSYTH: The court may increase the amount.

Mr. KELLEY: That is correct, but my suggestion is that a great deal of time could be saved if we would leave out the amount claimed by secured creditors, and permit the solicitor and the trustee to make a satisfactory adjustment between themselves. I see my friend Mr. Denison here, and I know I have dealt with him in that way on estates. We may get together, decide that ten per cent is too high, a suggestion is made and we decide upon an amount by mutual agreement. If the amount of the secured claims is allowed to remain in, there is no opportunity for negotiation between the trustee and the solicitor in arriving at a fair compensation. It is most unfair to the solicitor.

Those, Mr. Chairman, are the submissions which the Law Society of Upper Canada wish to place before you.

The CHAIRMAN: Thank you very much, Mr. Kelley. Are there any questions?

Hon. Mr. ASELTINE: I move that we adjourn until Wednesday next at 10.30 a.m.

The committee adjourned until Wednesday, March 16, 1949, at 10.30 a.m.

Appendix "A"

SENATE BILL N

An Act Respecting Bankruptcy

OBSERVATIONS OF THE HONOURABLE MR. JUSTICE URQUHART

In my study of the proposed Senate bill, I have had the advantage of reading the recommendations of the committee of the Board of Trade of the City of Toronto, and of consulting with Mr. F. G. Cook, K.C., Registrar of the Bankruptcy Court. I approve of the bill in principle and, save as otherwise referred to herein, in detail.

The Superintendent of Bankruptcy, I consider, has done a splendid job in revising the bill which was discussed by me in committee at a former session in 1946.

I find myself in agreement with practically all of the recommendations of the Board of Trade committee as set forth in their memorandum of February 22, 1949. I will deal with a number of these specially as I go along, together with ideas of my own which have occurred to me in the reading of the draft bill and the results of the Board of Trade's study.

The bill itself shows a tendency to simplification in language, which is very commendable. On the other hand there is danger of over-simplification, and where possible it seems to me that the wording of the present sections should be closely followed. In the last thirty years in which the Bankruptcy Act with amendments has been in force, there has been built up a considerable body of law in bankruptcy, and these decisions, of course, are based upon the Act as it now exists. It is often found, in interpreting the wording of the statutes, there is danger that the benefit of these decisions will be lost.

Dealing with the sections seriatim, it is my opinion that:

Section 2 (g) should have the word "original" in front of the word "jurisdiction" in line 1.

Section 2 (h) of the present Act should not be eliminated in my opinion.

Section 2 (j) appears to me to be over-simplified and I should have thought that section 2 (*p*) of the present Act would have been better.

Section 2 (k) does not seem to me to show any improvement over old section 2 (*y*).

Section 2 (b) of the present Act should be retained.

Section 2 (v) of the present Act, defining "Judge" should be retained.

Senate Bill L-11 contained in *section 2 (z)* the following definition of "transaction":—

> " 'transaction' means anything done that affects another person's rights or obligations and out of which a cause of action may arise, and, without limiting the generality of the foregoing, includes contract, dealing, gift, delivery, payment, settlement, sale, conveyance, transfer, assignment, charge, lien, pledge, mortgage, hypothecation or judicial proceeding taken or suffered."

The word "transaction" replaced the various specific terms referred to in the definition throughout the Bill. Senate Bill N now drops the definition of

"transaction" without replacing the specific terms in their appropriate context. There is apprehension that confusion will result, and it is proposed that a definition of transaction be written back into the Bill if it is decided not to retain sections 64 and 65 of the present Act.

Section 4 (2), I was wondering why the words "or more" were included in line 1 thereof. I would have thought that the present section 160 (2) would be better.

It is considered that the bill should contain provision for Official Receivers depositing in Court authorized assignments and relevant material so that when applications are made to the Court all material will be available. This provision has been omitted from the bill, apparently due to an oversight. It was part of section 10 of the present Act. To that end, it is proposed that the following section be written into the Act to provide for this feature of section 10 of the present Act and present Rule 88:—

> After the first meeting of creditors has been held, the Official Receiver shall deposit forthwith in the court having jurisdiction in the locality of the debtor the authorized assignment, or the certified copy of the receiving order, together with the statements of affairs made pursuant to sections 26 (2) and 117 (*d*), the questionnaire, the notes of the examination under section 120 (1), and the minutes of the first meeting of creditors.

This provision could be added to section 4 of the bill.

Section 6 (3). The following provision should be added to section 6 (3): and shall forthwith deposit in the court having jurisdiction in the locality of the debtor a certificate of such appointment.

Section 8 (7). As a safeguard against the ill advised carrying on of a bankrupt's business, section 8 (7) should require an order of the Court to enable a trustee to carry on the business of a bankrupt up to the first meeting of creditors. The inspectors will be appointed at that meeting, and they will then become responsible for deciding whether or not the bankrupt's business is to be carried on.

Section 9 (14). This section requires the trustee to prepare and file in Court a report on the affairs of the bankrupt prior to the discharge of the trustee. Very few corporations which become bankrupt ever apply for discharge from bankruptcy. To relieve the trustee from the unnecessary duty of preparing and filing a report on so many corporations, where it will not have any importance on an application for discharge, it is suggested that corporations be excepted from the report required in section 9 (14).

Section 12 (2). It is my opinion that the recommendation of the Board of Trade to be found in its supplementary recommendations should be adopted. One of the difficulties in the administration of estates is that certain trustees are dilatory. I have one or two in mind, and applications have to be made to bring these men to time. The present Rule 123 does not seem to cover the situation that has occurred in a number of cases and it seems to lack teeth, so that my recommendation is that this clause be strengthened in order to secure efficiency in the clearing up of estates.

Section 17 (1). Inspectors as well as creditors should be enabled to vote the trustee's remuneration. This can be done by inserting the words "inspectors or of" after the word "of" in line 3 of section 17 (1).

Section 21 (1) (a). It would appear that $1,000 is too high a figure, as it might be difficult for a creditor whose claim amounted to less than $1,000 to induce another creditor to join in a petition. Creditors are often reluctant to

join in a bankruptcy petition. In the present Act the debt due to the petitioning creditor or creditors is required to be $500 or more, and this would seem to be a reasonable amount.

Section 21 (6). There is no provision in this section, or any other section of this Bill, for adjudging the debtor bankrupt. In ordinary practice, the effect of a receiving order taken by itself, is merely the appointment of a receiver of the property of the debtor. The definition of "bankrupt" in section 2 (*c*) of the Bill is:

> a person who has made an assignment or against whom a receiving order has been made or the legal status of such a person.

Notwithstanding this definition, and section 41 (5) of the Bill which provides for the vesting of the debtor's property in the trustee, there should be a substantive provision in the Bill for adjudging the debtor bankrupt, as in the present Act. The wording of section 4 (6) of the present Act should be retained, namely:

> and, if satisfied with the proof, may adjudge the debtor a bankrupt and in pursuance of the petition, make an order, in this Act called a receiving order.

The adjudication of bankruptcy is the basis in the administration of involuntary bankruptcy proceedings.

Section 21 (10). I am in doubt about the recommendation of the Board of Trade, and think that the matter ought to be further considered. My recommendation would be not to depart from old section 4 (8). The Bankruptcy Court can not only determine whether there is a debt, but also if there is a *bona fide* dispute, or where there is a doubt about the matter, require the creditor to bring an action to establish his debt before the petition is disposed of.

Section 22 (1). This section provides that a petition may be filed against the estate of a deceased debtor, but it is defective in that proceedings must always be taken against a person. Section 22 (1) should be revised in the words of the English Act to provide for a "petition for an order for the administration of the estate of the deceased debtor according to the law of bankruptcy".

Section 24. The added protection seems to be very good and in my opinion should be adopted.

Section 25. I am still of the opinion that the amount of the wages in this section should remain at the present amount of $1,500.00, and I believe that the future will bear out that the sum of $2,500.00 is too high.

Section 40 (1). The words "until the trustee has been discharged or" in line 7 conflict with the overriding purpose of the Act and certain other specific sections, and should be deleted.

The result of these words is that following the trustee's discharge and prior to the bankrupt's discharge creditors could bring actions against the bankrupt respecting claims provable in the bankruptcy, without the leave of the court.

The unfettered ability of creditors to take proceedings against a bankrupt is contrary to the purpose of the Act which is to stay all proceedings during the bankruptcy. Moreover, it is not necessary that creditors should have the right to take action against a bankrupt following the trustee's discharge, nor is it desirable that a creditor should gain a preference by any such right. By virtue of section 19 (10) the trustee remains *de facto* trustee following discharge, and the bankrupt's assets would vest in him. Also, in case of need, under section 19 (11) the *de facto* trustee could be reappointed trustee to complete the administration of the estate.

Section 46 does not specifically cover sections 70 (3) (4), 71, 72 and 73 of the present Act, which contain provisions that have been found important in use. It is considered that these sections of the present Act should be carried forward into the Bill; also for the same reason the provision of present rules 144 to 152 should be retained. The alternative to the simple group procedure provided by these sections would be individual action against each of the contributories, who sometimes number in the hundreds.

Section 50 (2). I agree with the Board of Trade that thirty days is too long in both this subsection and in subsection 4, and I concur with the Board of Trade's suggestion in its memorandum of January 6, 1949, page 11, under the heading of section 52 (2), as it was then.

Section 64. I do not approve of any change in this section (except as suggested below) or in section 65, believing that the sections which have been the subject of interpretation for years should remain as they are.

The effect of section 64 of this Bill will be that all "transactions" entered into by the debtor with his creditors within three months preceding the bankruptcy are void, regardless of any intention on the part of the debtor to prefer any creditor. The present Act requires proof of an intention to prefer one or more creditors over the general body of creditors. This has been the policy of the Act since its inception, and is also the policy of the English Act. Under section 64 of the Bill, payments made to creditors within three months preceding the bankruptcy, bona fide and in the ordinary course of business, would be void. This would result in unsettling many ordinary and legitimate business transactions. There would be no assurance that a legitimate transaction would not be set aside in the event of a bankruptcy within three months which could not reasonably have been foreseen.

It is recommended that section 64 of the present Act should be retained.

It is recommended, however, that a clause be added to section 64 of the present Act, providing that there is no need to prove concurrent intent. Section 64 requires proof of intention to prefer by the debtor only, and the doctrine of concurrent intent apparently has been taken over from decisions under the provincial Assignments and Preferences Act.

Section 65 (1). It is recommended that section 65 of the present Act be retained.

Section 65 of the Bill is over-simplified, and does not contain all the provisions of section 65 of the present Act. Section 65 of the Bill omits reference to "the effect of bankruptcy or of an authorized assignment on an execution, attachment or other process against property" referred to in section 65 (1) of the present Act. It also omits reference to the payments which are protected by section 65 (1) (*a*) and (*b*) of the present Act.

Section 65 of the present Act sets out in detail and explicitly transactions which are protected. Section 65 of the Bill appears to be too general in its provisions, and it would lead to ambiguity.

Section 65 (2) of the Bill is section 58 of the present Act, and it should be retained.

Section 69. I would suggest that subsection be added in something like the following terms:

> The Court may at any time if satisfied upon the application of a creditor that the trustee is not diligently performing his duties, order the trustee to call a meeting and such meeting shall be called within seven days of the date of the order.

The object of this is to try to supplement what has been provided for in new section 12 (2).

Section 75 (3). It should be set out in positive form that proxy by telegram or cable is valid.

Section 82 (12). It should be noted that section 186 (2) of the present Act has the words "trustee or" before "inspector". Is there a similar provision in this Bill for defects in the appointment of the trustee?

Section 82 in general, I do not think it wise to have so many subsections, and it would be better if there were a renumbering of these.

Section 85 (1). I do not think it is equitable to deprive non-filing creditors of participation in the dividend, as the absence of filing may be accidental and not in any sense deliberate.

Section 85 (6) appears to me to be too harsh.

Section 95. The idea behind this section appears to be good, but in the case of 95 (e) it has always been my opinion that these taxes have been placed too high in the scale of priorities, and that they should go behind the claim of the landlord for arrears of rent (f), and the claims set out in (h) (i) and (j).

Section 107. Is this not the place to provide for the failure of the trustee to wind up promptly? Section 74 of the present Act seems to me to be better than the proposed section.

Section 111 (3) and (4). I think the procedure provided in these subsections is unnecessary and will only tend to create delay.

Sections 117 (o) and 120 (1) refer to general rules. A good many of the present rules have been absorbed into the new Act as sections. What provision is being made as to the remainder of the rules, or is a new set of rules being drafted and made applicable.

Section 120. I think the report of the Official Receiver is unnecessary and should not be made to the Court or Superintendent. I agree with the recommendation of the Board of Trade in regard to section 120 (1) (2) and (3), as I consider this report unnecessary.

Section 121 (3) does not carry forward into Senate Bill N the provisions of existing section 138 requiring the debtor to answer questions even though his answers might incriminate him or expose him to civil liability. The elements of present section 138 mentioned are considered necessary, and for that reason retention of section 138 of the present Act in the place of section 121 (3) of the Bill is preferred. If section 138 of the Act is retained, it will not be necessary to keep section 125 of the Bill which is already provided for in section 138 of the present Act.

Section 127 provides for the automatic discharge of the debtor. The responsibility is placed on the trustee of obtaining an appointment for hearing the application for discharge. The provisions of the present Act (sections 141 et seq.) should be retained, pursuant to which the bankrupt makes his own application for discharge.

However, I would suggest that the trustee be required to file in the court, as a condition precedent to his discharge, a report in the form now used (form 73) on the discharge of debtor, leaving it to the debtor to seek his own discharge, but having the report available in case the trustee is not available. Copies of the report should be served on the debtor and sent to the Superintendent. This report should not be required in the case of debtors which are limited companies.

The question of the automatic discharge of debtor was discussed in the memorandum which I presented before the Standing Committee on Banking and

Commerce on the 20th of June, 1946. (See page 49 of the Minutes of Evidence). My comments and objections to the principle of automatic discharge as contained in the 1946 Bill apply with equal force to section 127 of this Bill.

My comments at that time were:

> Section 146 [corresponding to section 127 of the present Bill] dealing with the discharge of the bankrupt would prove most unsatisfactory. It shifts the onus of making the application for discharge from the debtor to the trustee. This section is apparently an attempt to provide "an automatic procedure" for the discharge of the bankrupt. The Superintendent in his note to the section states that this procedure has been taken from the American Bankruptcy Act, and reference is made to section 14 of the amendment to the Bankruptcy Act of the United States as approved on the 22nd of June, 1939. In 1943 I was consulted as Bankruptcy Judge by American authorities in Washington as to the Canadian procedure on discharge of bankrupts, and I understood that the American procedure was not satisfactory and was to be amended. I understand that a Bill to amend the American Bankruptcy Act is now before Congress.
>
> The provision in the American Act for "an automatic procedure" for discharge of bankrupt is not so serious in its consequences as such a procedure would be in Canada, as, unlike the Canadian Act, the American Act has no provision for making the after-acquired property of the bankrupt available for distribution among his creditors, except that "all property which vests in the bankrupt within six months after bankruptcy by bequest, devise, or inheritance, shall vest in the trustee". See section 23 (*a*) of the present Canadian Act, retained as section 25 (*a*) in the New Act [retained as section 39 (*c*) of the present Bill] for the definition of "property of the debtor" which includes:—
>
> > all property which may be acquired by or devolve on him before his discharge.
>
> Also, the American Act does not provide for conditional discharges of bankrupts.
>
> The present procedure is to be preferred. The bankrupt makes a special application for his discharge, and this places the responsibility on the bankrupt of satisfying the court as to his conduct and that he is entitled to his discharge. This has been the practice under the Canadian Act since it was passed in 1919 and it has always proved satisfactory. It is based on the practice under the English Act, which has been found satisfactory through many years of experience.

The present Bill makes no provision for the discharge of persons who have gone bankrupt under the present Act.

Section 129 appeals to me as leaving the matter of discharge to the court's discretion.

Section 135 seems to eliminate the continuance of alimentary debts which are preserved by section 147 (1) (*d*) of the present Act, and which should be retained in this section.

Section 138 should contain provision for the court annulling a bankruptcy upon filing a bond or payment into Court in satisfaction of the debt, along the lines of section 140 (3) of Senate Bill L-11.

Section 139 contains part of the present rule 162, but it omits the very important provision that the order of discharge "shall take effect from the day it is drawn up and signed".

The Bill provides in section 139 (2):

> Notice of an order of discharge or annulment shall be published in the *Canada Gazette* by the bankrupt, and the order shall not become effective until so published.

The above provision of present rule 162 is preferable, as it is more in conformity with the regular practice of the court. The discharge should take effect from the date the order is drawn up and signed and becomes part of the records of the court. Although publishing in the *Canada Gazette* is necessary, the effect of the discharge should not be made dependent on the actual gazetting of the order.

Section 140 (1) (e) provides that "in the Province of Ontario, the High Court of Justice for the province" shall have original jurisdiction in bankruptcy.

This should be changed to read "the Supreme Court of Ontario", as in the present Act. "The High Court of Justice" is not a court, but is a branch of the Supreme Court of Ontario. See the following sections of the Judicature Act, 1937 R.S.O. chap. 100:

Section 2:

> *The Supreme Court shall be continued as a superior court of record,* having civil and criminal jurisdiction, and it shall have all the jurisdiction, power and authority which on the 31st day of December, 1912, was vested in or might be exercised by the Court of Appeal or by the High Court of Justice or by a Divisional Court of that Court, *and such jurisdiction, power and authority shall be exercised in the name of the Supreme Court.*

Section 3:

> The Supreme Court shall continue to consist of two branches—The Appellate Division, which shall hereafter be known as "The Court of Appeal for Ontario", and The High Court Division, which shall hereafter be known as "The High Court of Justice for Ontario", and this Act and rules shall be deemed to be amended throughout accordingly.

Section 10:

> There shall be a seal for the Supreme Court to be approved by the Lieutenant-Governor in Council.

Section 140 (2). While this section appears to imply (which is correct) that the Courts of Appeal throughout Canada have no original jurisdiction, should not that be made clear in this section?

Section 140 (3). I would add the word "likewise" before the word "has" in line 1 of section 140 (3).

Section 144 (8). Under section 83 (1) claims respecting damages arising from tortious acts will be provable in bankruptcy. The rights to trial by jury now existing respecting such causes of action should be preserved. To that end the words "with or without jury" should be inserted in section 144 (8) after the word "tried" in line one.

Section 149 (1) (h). The wording of section 149 (1) (*h*) is related to the original intention in the revision of the Act to have claims dealt with directly by the Court. As that intention has been discarded, the wording is not appropriate and should be changed back to that of section 150 (*i*) of the present Act under which the Registrar has power to hear and determine any appeals from a decision of a trustee allowing or disallowing a creditor's claim where such claim does not exceed five hundred dollars.

Section 149 (1) (i) should be expanded to enable the Registrar to deal with the remuneration of the trustee.

Section 150. I approve of the Board of Trade's suggestions in that regard.

Section 156. In regard to the section generally I would prefer to leave it in the form it now is in the present section 191. In particular, I consider 156 (*a*) and 156 (*g*) as being too drastic. In regard to the latter, no one in business could buy stocks for example, and the penalty is too severe and might lead to discrimination. The indictment clause should be deleted, and the penalty clause thereunder is too high. (See the English Act, sec. 157 (1)).

Section 160 (g). In regard to soliciting proxies, I regret to say that I do not approve of the suggestion of the Board of Trade that this subsection should be deleted. I think the business of soliciting proxies has gone too far, and that the new section rightly curtails such activities.

Section 162. I think this should be left in the form as appears in section 201 of the present Act.

Section 171 provides that the enactments mentioned in the schedule on page 101 of the draft Act are to be repealed. Does this also include the general rules, or in what position are they?

As has been pointed out by the Board of Trade memorandum, there appear to have been certain sections of the present Act which are not carried into the Bill as drafted. I have gone over these in conjunction with the Board of Trade report, and I agree with the following recommendations of the Board of Trade report:

Section 9 (7) of the present Act. The Act should contain a provision corresponding to section 9 (7) of the present Act under which every assignment of property, other than an authorized assignment made by an insolvent debtor for the general benefit of creditors, shall be null and void. Such a section is needed to cope with assignments prejudicial to the interests of creditors.

Section 10 of the present Act. I have already referred on page 3 of these observations to the importance of retaining section 10 and rule 88, combined, and I have outlined a section which, in my opinion, should be written into the Bill.

Section 33 of the present Act. The Bill should retain provisions along the lines of those in section 33 of the present Act which enable the court to correct mistakes, defects, or imperfections in authorized assignments or receiving orders or proceedings connected therewith, and prevent any creditor taking advantage of mistakes, etc.

Section 80 of the present Act. Section 103 of the Bill applies where both partners of a partnership are in bankruptcy, but does not make specific provision for the case where only one partner is bankrupt. Section 80 of the present Act, which covers the situation where only one partner is bankrupt accordingly should be carried forward into this Bill.

Section 149 of the present Act. The Bill should contain a provision along the lines of this section, settling the evidentiary value of an order of discharge and, in particular covering the point that such an order shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein. The bankrupt can then plead the order of discharge in respect to proceedings founded on causes of action which occurred before his discharge.

Section 153 of the present Act. This section of the present Act has apparently been omitted by mistake. Its continued retention is necessary to carry out the underlying intention that the Bankruptcy Act shall apply to all insolvent companies, but that in special cases the Court can grant leave to take proceedings under the Winding-up Act.

This is not to be taken that I disagree with the other recommendations of the Board of Trade, but I specially commend these to the consideration of this Committee and the Superintendent.

With regard to *section 141 (6) of the present Act,* it seems to me that this section should make it clear that the examinations in question may be read in any proceeding having reference to the bankrupt's estate; also that I think it would be advisable to provide that the examination of any claimant should be able to be read in any situation.

I have before me at the present time examinations of claimants made under the authority of the present Act in which I am in doubt as to whether they can be used. In a sense they are cross-examinations on claims filed, but in another sense there seems to be some doubt as to their admissibility as admissions against a claimant.

As suggested in the recommendations of the Board of Trade, it would be advisable to provide for proceedings pending under the present Act. The comments of the Board of Trade are as follows:

> In order to provide for Pending Proceedings, consideration should be given to the need for including in the Canadian legislation provisions along the lines of section 168 (2) and (3) of the United Kingdom Act:
>
> 168 (2). This Act shall apply to proceedings under the Bankruptcy Acts 1883 to 1913, pending at the commencement of this Act, as if commenced under this Act.
>
> 168 (3). Until revoked or altered under the powers of this Act, any fees prescribed and any general rules and orders made under the Bankruptcy Acts, 1883 to 1913, and the Bankruptcy (Discharge and Closure) Act, 1887, which are in force at the commencement of this Act, shall continue in force, and shall have effect as if made under this Act.

APPENDIX "B"

THE MONTREAL BOARD OF TRADE

MEMORANDUM re OPERATION OF COMPANIES' CREDITORS ARRANGEMENT ACT 1933

1. Meetings are called at the instance of the debtor company, notwithstanding the fact that the company may be in bankruptcy or in liquidation under the Winding-Up Act.

2. The granting of a petition to call a meeting is invariably accompanied by a stay of all other proceedings.

3. Until the meeting is held, or an arrangement is effected, the debtor company may:

(*a*) make payments (e.g. to creditors, for salaries, etc.);
(*b*) process raw materials—a matter of vital importance in the Province of Quebec where the law permits revendication. During the delay required to submit the proposal the unpaid vendor may lose his right to repossess the goods sold.
(*c*) conduct its business without control.

4. When a meeting is summoned, unless the court so orders:

(*a*) a statement of the debtor's affairs need not accompany the proposal;
(*b*) a list of creditors need not be issued;
(*c*) there is no provision for an examination of the debtor's affairs.

5. The Act does not specify the period of time to be allowed in calling the meeting, so that creditors at a distance frequently find it impossible to attend or to be represented, on account of insufficient notice.

6. Frequently proxies are issued by the debtor company and executed in favour of the company or a nominee of the company by creditors unable to attend or by creditors for small amounts.

7. The debtor company may without notice to its creditors alter its proposal at the meeting.

8. There is no provision that a representative of the debtor company shall not preside and control the meeting and this often happens.

9. Creditors' claims may not be admitted by the company in which event summary application must be made by either the company or the creditor to the court for a decision.

10. The company may permit creditors' claims for the purpose of voting but later deny such claims.

11. The statement of affairs prepared and submitted by the company is not usually verified. It may not classify the creditors nor fully disclose the debtor's true position so as to enable the creditors to judge whether the proposal is feasible and fair.

While the creditors may demand an examination and further information, the fact remains that they are at a decided disadvantage in not having that control which the Bankruptcy Act provides in similar circumstances.

12. Should an examination of the debtor's affairs be asked, the debtor cannot be compelled to pay the cost thereof. Creditors are reluctant to assume such expense as the company may at any time elect to withdraw its proposal or it may make an assignment.

13. The Act may be and has, it is believed, been used by companies formed for the express purpose of effecting a compromise.

14. The Act makes no provision for the payment of the expenses of submitting the proposal.

15. Although the Act provides that general rules may be issued by the Governor in Council, this has not been done and there is no evidence that the courts in any of the districts concerned have applied any particular rules providing adequate control by unsecured creditors.

16. The administration of the Act is not assigned to any particular department so the responsibility for the General Rules provided for in Section 17 cannot be determined.

17. Because no Department is responsible for its administration, no statistical information regarding its operations and effects are required to be filed with any department or agency of the Government.

Montreal, 7th March, 1949.

Appendix "C"

THE DOMINION ASSOCIATION OF CHARTERED ACCOUNTANTS

Recommendations of the Sub-Committee of the Legislation Committee on the Proposed Bankruptcy Act, 1949, (Bill N)

1. Section 3 (9)—Remission of Funds on Deposit to Receiver-General on Order of Superintendent

This subsection provides that where a bankrupt estate is left without a trustee in the circumstances mentioned, the Superintendent may require the funds of the estate on deposit in a bank or elsewhere to be remitted to the Superintendent for deposit with the Receiver-General pending the appointment of a trustee.

It is recommended that the Superintendent be required to obtain an order from the Court requiring the remittance of the funds in the circumstances specified.

2. Section 8 (13) and Sec. 163 (4)—Initiation of Criminal Proceedings by Trustee

The decision to initiate criminal proceedings should be made by the inspectors or by the Superintendent; and the responsibility of the trustee should be confined to transmitting the inspectors' recommendation to the Superintendent.

It is therefore recommended that the two subsections referred to be amended to provide that where proceedings are recommended by the creditors, the inspectors or the Court against any person believed to have committed an offence, the trustee shall transmit such recommendation to the Superintendent for his consideration and the Superintendent shall take whatever action he considers desirable.

3. Section 9 (8)—Inspection of Books and Records of Estate

The right to inspect the books and records of the estate should be limited to the Superintendent and the inspectors. To extend the right to others would often create an intolerable burden on the trustee.

It is therefore recommended that Sec. 9 (8) be amended to limit the right of inspection to the Superintendent and the inspectors.

4. Section 10 (1) (*a*)—Power of Trustee to Sell Bankrupt's Property

It is recommended that Sec. 10 (1) (*a*) be amended to read:

(1) The trustee may, with the permission of the inspectors, do all or any of the following things:—

(*a*) *sell or otherwise dispose of for such price or other consideration as the inspectors may approve* all or any part of the property of the bankrupt, etc. etc.

5. Section 13—Redirection of Bankrupt's Mail

The procedure for obtaining the redirection of the bankrupt's mail to the trustee as outlined in this section is over-complicated, and the three months' limitation is not always a sufficient length of time.

It is therefore recommended that the redirection of the bankrupt's mail be effected upon the filing with the appropriate agencies of a certified copy of the trustee's appointment, for a period of three months from such date, and that an extension of such period for an additional period not exceeding three months may be obtained by application to the Court.

6. Section 27—Proposals, Powers of Trustee

In order to prevent abuse of this procedure respecting proposals by insolvent persons it is recommended that a provision be added that upon the making of a proposal by an insolvent person, the trustee shall have the same powers in respect to the property of the debtor as an interim receiver has under Sec. 24 (2) or as a trustee has on the making of a receiving order.

7. Section 36(1)—Proposals, Proceedings in Case of Default

This subsection now provides that in case of default in making payment pursuant to a proposal or where the proposal cannot be carried out without injustice or undue delay or where the Court's approval was obtained by fraud, the Court may, on the application by the trustee or by any creditor, set aside the proposal and make such order as it deems proper in the circumstances.

It is recommended that the right be given the debtor also to make application to set aside the proposal.

8. Section 36(3)—Annulling Proposals

This subsection provides that whenever the debtor is convicted of a bankruptcy offence a proposal may be annulled.

It is recommended that the enactment be amended by insertion of the words "by the Court" following the word "annulled", to ensure that a proposal can only be annulled by an order of the Court.

9. Section 38(2)—Proposals by Corporations

It is considered that the provisions respecting proposals in the proposed Bankruptcy Act are superior to those contained in the Companies Creditors' Arrangement Act, which lend themselves to manipulation to defeat the rights of creditors. The suggestion is therefore offered for consideration that the Companies Creditors' Arrangement Act be amended simultaneously with enactment of these new provisions respecting proposals in the Bankruptcy Act to provide for the utilization of a licensed trustee to supervise the administration of businesses brought under the Companies Creditors' Arrangement Act.

10. Section 87—Removal of Security from Bankrupt's Premises

It it recommended that an additional subsection be added to Sec. 87 to provide that in the case of a security on movable property, where the creditor has valued the security and such valuation has been accepted by the trustee, the trustee may require the creditor to remove the asset from the bankrupt's premises forthwith, and that if the creditor fails to do so, the trustee may sell the asset for the account of the secured creditor.

11. Section 95(1) (*d*)—Priority of Claims—Salary and Wages

Having regard to provincial legislation in respect of vacations with pay, it is recommended that in addition to the priority of claim for wages, salaries, etc.

to the amount of $500, this paragraph (*d*) be amended to give priority to an employee's portion of a provision for vacation with pay required to be set up by the employer under any provincial legislation but not to exceed $100 for any employee.

12. Section 105—Application of Provincial Law to Landlords' Rights

Under Sec. 42 (4) a trustee has a prior claim to goods of the bankrupt (or the proceeds thereof) seized under distress for rent.

It is therefore recommended that Sec. 105 should also except this right of the trustee from the application of a province's law respecting the rights of landlords.

13. Section 127 (1)—Automatic Application for Discharge of Bankrupt

This provision imposes an obligation on the trustee which in a great many cases will be quite unnecessary. Full effect could be given to the intention of this provision by simply requiring the trustee to notify the bankrupt of his right to a discharge and outlining the procedure to be taken.

It is recommended therefore that Sec. 127(1) be amended accordingly.

APPENDIX "D"

THE BOARD OF TRADE OF THE CITY OF TORONTO

Toronto, February 22, 1949.

The Honourable E. Beauregard, Chairman, and Members of the
Committee on Banking and Commerce of the Senate,
Parliament Buildings,
Ottawa, Ont.

Senate Bill N—An Act Respecting Bankruptcy

Dear Sirs:—The Board of Trade of the City of Toronto is primarily a trade association, having been incorporated by a Special Act of the Parliament of Canada, originally dated February 10, 1845.

Its present membership comprises over five thousand five hundred business and professional men engaged in all branches of commerce, industry and finance and in the various professions. Many of them operate on a national or international scale.

A substantial number of members are interested in legislation respecting bankruptcy. Accordingly, the Board appreciates the opportunity given by the Senate Standing Committee on Banking and Commerce to place before the Committee on behalf of interested members its considered views on bankruptcy law revision.

When Senate Bill A-5 was before this Committee in 1946 the Board submitted a number of recommendations which were mainly concerned with principle. These recommendations were the result of an exhaustive study carried out by a Committee operating under the auspices of the Board which was comprised of representatives of unsecured and secured creditors, trustees and liquidators and members of the legal profession specially concerned with bankruptcy law.

It has been gratifying to observe that so many of the recommendations made in 1946 have been incorporated in the Bill now before the Senate. Consequently, the Board is able to say that it approves Senate Bill N in principle and to a large extent in detail. The Board takes this opportunity to record its appreciation of the fine work performed by the Superintendent in Bankruptcy, Mr. Robert Forsyth, K.C., in developing the revision of our bankruptcy law to the high point at which it exists in this year's revising Bill.

Also, it is desired to comment favourably upon the method of revising legislation which has been employed in this case—that of introducing a bill, giving it one reading and then standing it over until the next Session. This procedure provides those interested with adequate time to make the extended studies necessary to the preparation of well considered representations.

Important Features of Senate Bill N Supported

Senate Bill N makes many improvements in the bankruptcy law which, while not mentioned in this brief, are nevertheless approved. It is desired to refer to some of the more important of them.

Proposals Without Bankruptcy

The provisions in Section 27 and following will enable both individuals and corporations to make proposals without bankruptcy under the safeguards provided by the procedure laid down in the Bill. In the case of businesses which, while in financial difficulties, are capable of being saved both debtors and creditors will benefit. The fact of bankruptcy in itself greatly increases the difficulty of re-establishing a business as a going concern. Also, there is normally less loss on realization in the case of an operating business than in the case of one which has been adjudged bankrupt.

Relation to Companies' Creditors Arrangement Act

In future all debtors will be able to make proposals without bankruptcy instead of only incorporated companies under the Companies' Creditors Arrangement Act, as at present. While realizing that the Companies' Creditors Arrangement Act is not before the tSanding Committee on Banking and Commerce, it is considered that the question of proposals without bankruptcy under the Bankruptcy Act should not be passed over without reference to the relationship between the two Acts.

So far no procedure has been established under the Companies' Creditors Arrangement Act. This has not been a disadvantage in the large and complex corporation reorganizations, involving classes of securities, for which that Act is primarily intended. However, the Act, as any public legislation should be, is open to use by any incorporated company. In the years before the war it was resorted to quite unexpectedly by a large number of simple incorporated trading companies without different classes of securities. The lack of established procedures enabled improper compromise settlements to be put through in too many cases. The abuses occurred as a rule where the interests affected were not deemed substantial enough to warrent retention of counsel in their protection.

The position then is that an incorporated company will be able to elect to make a proposal under either Act. As the procedure under the Bankruptcy Act is subject to more supervision and safeguards. it is reasonable to expect that debtors who contemplate improper proposals will try to effect their compromise settlements under the Companies' Creditors Arrangement Act. There is apprehension that in the event of a business recession, with its resulting increase in the number of firms experiencing financial troubles, there will be a recurrence of the pre-war abuses.

The secured creditor interests concerned have displayed a co-operative attitude in finding a solution. The Dominion Mortgage and Investment Association in 1946 recommended amendments to the Companies' Creditors Arrangement Act which provided for writing into the Act the procedure which has been developed in practice in the case of the financial reorganizations for which the Act was intended. The amendments proposed will not impair the value of the Act in true financial reorganizations affecting classes of securities but the procedure to be established would provide the controls needed to prevent the abuses in connection with trading companies described above.

If amendements along the lines proposed are enacted, there would be no possible advantage for trading companies, without classes of securities, making proposals under the Campanies' Creditors Arrangement Act. In fact, there is every reason to believe they will uniformly proceed under the Bankruptcy Act, the procedures of which are better suited to the problems of such companies.

Consequently, the Board is of the opinion that the results hoped for from the provisions for proposals without bankruptcy under the Bankruptcy Act will only be realized when the Companies' Creditors Arrangement Act is amended along the lines proposed. Consequently, the Board hopes that rapid progress can be made in amending the latter Act.

Summary Administration

The provisions for summary administration will be most helpful. Their benefit will not be limited by any means to merely administration of bankruptcies with limited assets at less than the normal scale of costs. This abridged procedure will enable poor but legitimate debtors to obtain relief, through bankruptcy, from debts which are beyond their capacity to meet, and to re-establish themselves in life. The provisions for summary administration will go far to make the benefits of bankruptcy available to our poor as well as to our financially more fortunate citizens.

Scheme of Distribution

Heretofore one of the most vexing aspects of bankruptcy administration has been the chaotic state of the priorities of distribution, due to conflicting claims for priority under various provincial and federal statutes. The clarification of priorities in the scheme of distribution sections in Bill N are therefore of great value.

Trustees' Remuneration

It has been gratifying to note the steps taken to improve the remuneration of trustees. Up to now the basis of trustees' remuneration has remained the same as when the Act was first passed. Not only have all costs increased since that time, but many additional duties have been imposed on trustees. Some relief in fees, especially as to small estates, has become necessary if trustees are to be expected to continue to administer the small estates. Further suggestions respecting trustees' remuneration will be found below.

Income Tax Returns

One of the most troublesome and costly duties placed on trustees has been that of preparing and filing income taxe returns which the debtor should have, but has not, made. Where the debtor has not kept proper books, books have had to be posted and balanced for several years before the trustee could make the returns. The costs that trustees have been put to have had to be paid out of the assets of the bankrupt and, therefore, at the expense of creditors, as the amount of money distributable to them is decreased by the amount of such costs. Frequently, even wage claims have been decreased by expenses incurred in preparing income tax returns.

Bill N places this matter on its proper basis by limiting the trustees' obligation to making the books and records of the bankrupt available to officials of the Income Tax Department to enable them to ascertain the bankrupt's income tax liability. If the officials consider that the situation warrants carrying out at the public expense whatever work is involved in preparing the bankrupt's income tax returns, the returns can be prepared and made on that basis, which is the proper one in the circumstances. There does not seem to be any valid reason for expecting creditors to add to their losses the expenses of administering the public revenue.

Futher Recommendations

Since the introduction of Senate Bill L-11 in 1947, the Committee working under the Board's auspices has carried out a further detailed study of bankruptcy law revision principally from the point of view of practical operation under the legislation. After having examined Senate Bill N in the light of the conclusions reached in the course of this study, the Committee considered that the following recommendation should be placed before the Senate Standing Committee on Banking and Commerce.

These recommendations have been adopted by the Board and are placed before the Senate Committee as a statement of the Board's policy respecting bankruptcy law revision. It is hoped the suggestions made will assist in developing our bankruptcy legislation to the most efficient operating basis possible.

Interpretation

Definition of Transaction

Senate Bill L-11 contained in Section 2 (*z*) the following definition of "Transaction":—

> "Transaction" means anything done that affects another person's rights or obligations and out of which a cause of action may arise, and, without limiting the generality of the foregoing, includes contract, dealing, gift, delivery, payment, settlement, sale, conveyance, transfer, assignment, charge, lien, pledge, mortgage, hypothecation or judicial proceeding taken or suffered.

The word "transaction" replaced the various specific terms referred to in the definition throughout the Bill. Senate Bill N now drops the definition "transaction" without replacing the specific terms in their appropriate context. There is apprehension that confusion will result and it is proposed that a definition of transaction be written back into the Bill.

Appointment and Substitution of Trustees

No Trustee Bound to Act—Section 6 (6)

Under Senate Bill L-11 the office of custodian is eliminated and the trustee is appointed in the first instance. Consequently, the trustee no longer has an interval before his appointment during which he can investigate the sufficiency of the assets to defray his costs. As a result, it is unfair to trustees to require, as in Section 6 (6), that on accepting appointment the trustee shall, until discharge or another trustee is appointed in his stead, perform the duties of a trustee under the Act. In the face of such a requirement the trustees' only protection will lie in requiring advance indemnification for expenses from creditors in many cases before accepting appointment as trustee. To avoid any unfairness to trustees or the onus of the provision being shifted to creditors, the trustee should not be bound to continue to act until following his acceptance of appointment he has been confirmed at the first meeting of creditors. By that time the trustee will have had opportunity to investigate and satisfy himself concerning the sufficiency of the assets to meet his costs and whether there is actual need for requesting indemnification from creditors.

Under the provisions of the Bill the property of the bankrupt is vested in the trustee on his appointment in the first instance. Provision should be added to divest this property from the trustee and revest it in the bankrupt in those cases where the trustee finds that there are not sufficient assets to cover his fees and expenses and the creditors do not agree to indemnify him, as a result of which the trustee declines to continue with the administration of the estate.

Duties and Powers of Trustees

May Continue Business of Bankrupt—Section 8(7)

As a safeguard against the ill-advised carrying-on of a bankrupt's business, Section 8 (7) should require an order of the Court to enable a trustee to carry on the business of a bankrupt up to the first meeting of creditors. The inspec-

tors will be appointed at that meeting, and they will then become responsible for deciding whether or not the bankrupt's business is to be carried on.

Insurance—Section 9(1)

Section 9(1) should clarify the coverage for which the trustee is required to insure by limiting his obligation to insure for fire risk in such amount as the inspectors approve and for such other coverages in such amounts as the inspectors may decide upon.

Trustee to File Report Before Discharge—Section 9(14)

Section 9(14) requires the trustee to prepare and file in Court a report on the affairs of the bankrupt prior to the discharge of the trustee. Very few corporations which become bankrupt ever apply for discharge from bankruptcy. To relieve the trustee from the unnecessary duty of preparing and filing a report on so many corporations, where it will not have any importance on an application for discharge, it is suggested that corporations be excepted from the report required in Section 9(14).

Powers Exercisable by Trustees with Permission of Inspectors—Executory Contracts—Section 10 (1) (c)

Empowering the trustee, upon payment in full for value received after the bankruptcy, to require any executory contract to which the bankrupt was a party to be carried out is approved generally. It is noted, however, that this provision would apparently enable a trustee to require the carrying out of a contract by its terms cancellable or terminable upon bankruptcy. This would affect licences or confidential arrangements, expressed to be cancellable or terminable in the event of bankruptcy for the reason that the non-bankrupt party is unwilling to continue the licence or arrangement with any person or corporation other than the bankrupt. To guard against the subsection affecting such licences or arrangements the following words should be inserted in Section 10 (1) (c) after the words "executory contract":—

> which does not otherwise provide for cancellation or termination thereof by reason of the bankruptcy and

Consideration should be given to whether this subsection in dealing with contracts, a matter of property and civil rights, may be ultra vires the Dominion Government.

Official Receivers to Deposit Assignments in Court

It is considered that the Act should contain provision for Official Receivers depositing in Court authorized assignments and relevant material, so that when applications are made to the Court all material will be available. To that end, it is proposed that the following Section be written into the Act to provide for this feature of Section 10 of the present Act and present Rule 88:—

> After the first meeting of creditors has been held, the Official Receiver shall deposit forthwith in the court having jurisdiction in the locality of the debtor the authorized assignment, or the certified copy of the receiving order, together with the statements of affairs made pursuant to Sections 26(2) and 117 (d), the questionnaire, the notes of the examination under Section 120 (1), and the minutes of the first meeting of creditors.

Remuneration of Trustee

To Be Voted by Creditors—Section 17 (1)

Inspectors as well as creditors should be enabled to vote the trustee's remuneration. This can be done by inserting the words "inspectors or of" after the word "of" in line three of Section 17 (1).

Not to Exceed 7½ Per Cent—Basis, Section 17(2)

As the trustee has to perform services in connection with the claims of secured creditors, the amount paid secured creditors should not be deducted in computing the amount upon which the trustee's fee is to be calculated. In this connection it is noted that under Section 106 the levy payable to the Superintendent covers payments on account of dividends or otherwise on account of claims of creditors, whether unsecured, preferred or secured.

Petition for Receiving Order

Bankruptcy Petition—Conditions on Which Creditor May Petition—Section 21 (1) (a)

Section 21 (1) (*a*) increases from $500 to $1,000 the debts necessary in the case of a petition. Attention is drawn to the practical difference respecting the amount of debt necessary in the cases of assignments and petitions. In the case of an assignment, the assignee has knowledge of all his debts and, therefore, can make use of all his debts in establishing the minimum of debts necessary. A petitioner has not knowledge of all the debtor's liabilities and must find enough creditors to constitute the minimum necessary for a petition and get them to join in the petition. Consequently, the amount of debt necessary to support a petition should not be as great as that necessary to support an assignment. Debts of $1,000 in the case of an assignment are satisfactory but the amount of debts necessary to support a petition should be left at $500 as at present.

Proof of Facts, etc.—Adjudicating Bankrupt—Section 21 (6)

While the procedure for obtaining a receiving order and having a debtor adjudged bankrupt is set out, the Bill does not contain an actual provision empowering a court to adjudge a debtor bankrupt. In this connection it is to be noted that a receiving order, which the court is authorized to make in Section 21 (6), does not in itself provide for an adjudication of bankruptcy. Notwithstanding the definition of bankrupt, there is need for a substantive provision for adjudicating bankrupt such as that contained in Section 4 (6) of the present Act which should be retained. This can be done by incorporating the provisions of Section 4 (6) of the present Act in Section 21 (6) of the Bill. However, the terms now in the Act should be revised to provide that the judge "shall" adjudge bankrupt.

Receiving Order on Another Petition—Section 21 (13)

To properly integrate the original petition and subsequent petition and the disposal of them, the words following the word "Act" in line six of Section 21 (13) should be revised to read—

> or may consolidate all petitions against the same debtor and make a receiving order on any petition or the consolidated petitions and may thereupon dismiss on such terms as it may deem just the petition or petitions in respect of which a receiving order has not been made.

Petition Against Estate of Deceased Debtor—Section 22 (1)

Section 22 (1), which provides that a petition may be filed against the estate of a deceased debtor, is defective in that proceedings must always be taken against a person. Section 22 (1) should be revised in the words of the English Act to provide for a "petition for an order for the administration of the estate of the deceased debtor according to the law of bankruptcy".

Stay of Proceedings

The words "until the trustee has been discharged or" in line seven of Section 40 (1) conflict with the overriding purpose of the Act and certain other specific sections and should be deleted.

The result of these words is that following the trustee's discharge and prior to the bankrupt's discharge creditors could bring actions against the bankrupt respecting claims provable in the bankruptcy, without the leave of the court. It is appreciated that under Section 127 and following sections the bankrupt will in most cases receive his discharge prior to the discharge of the trustee and the point won't arise. However, there will be circumstances which in some instances will result in the Court refusing or suspending discharge under Sections 129 and 130. It is in such cases that the point will arise.

The unfettered ability of creditors to take proceedings against a bankrupt is contrary to the purpose of the Act which is to stay all proceedings during bankruptcy. Moreover, it is not necessary that creditors should have the right to take action against a bankrupt following the trustee's discharge, nor is it desirable that a creditor should gain a preference by any such right. By virtue of Section 19 (1) the trustee remains *de facto* trustee following discharge and the bankrupt's assets would vest in him. Also, in case of need, under Section 19 (11) the *de facto* trustee could be reappointed trustee to complete administration.

General Provisions

Contributory Shareholders—Section 46

Section 46 does not specifically cover Sections 70 (3), (4), 71, 72 and 73 of the present Act, which contain provisions that have been found important in use. It is considered that these Sections of the present Act should be carried forward into the Bill, also for the same reason the provision of present rules 144 to 152 should be retained. The alternative to the simple group procedure these sections provide would be individual action against each of the contributors, who sometimes number in the hundreds.

Settlements and Preferences

Avoidance of Certain Settlements—Section 60 (1) If Bankrupt Within Five Years—Section 60 (2)

Section 60 (1) of the Bill voids settlements of property if the settlor becomes a bankrupt within one year after the date of settlement, and Section 60 (2) of the Bill voids settlements of property if the settlor becomes bankrupt within five years after the date of the settlement, unless the parties claiming under the settlement can prove that at the time of making the settlement the settlor was solvent without the property comprised in he settlement. Section 60 (1) would void settlements within the one-year period apart from any question of intent and even though the settlor was solvent at the time of making the settlement. This might have unjust effects on the beneficiaries of marriage and other family settlements. To avoid any such result, Section 60 (1) should be deleted. Then in each case the validity of settlements will rest on the five-year rule and the question of whether or not the settlor was solvent at the time of making the settlement.

Avoidance of Preferences in Certain Cases—Section 64 Protected Transactions—Section 65

There is apprehension lest dropping the requirement of proof of intent in Sections 64 and 65 of the present Act might result in unsettling many ordinary and legitimate business transactions which are made in good faith and for adequate valuable considerations and without any intent to prefer. Many legitimate transactions are entered into with the knowledge that the debtor is in some degree in financial difficulty and would come within the words "without notice or knowledge of or reason to suspect the insolvency of the bankrupt or of his having committed an act of bankruptcy" appearing at the end of Section 65 (1) of the Bill.

Sections 64 and 65 of the existing Act have operated satisfactorily in their present form in the bankruptcy laws of the United Kingdom for many years and the difficulty in the application of these sections in Canada has been due principally to certain decisions of the Courts requiring proof of concurrent intent. It is so difficult to prove concurrent intent that it is unduly hard to have preferences set aside which should be set aside. It is considered that the problems in Canada under Section 64 and 65 would be overcome if present Section 64 were amended to clearly state that there is no need to prove concurrent intent. The application of intent would then rest on proof of intent on the part of the debtor which in most cases would be established by his financial status at the time of any disposition of property attacked.

Inspectors

If No Inspector Appointed—Section 82 (8)

Section 82 (8) should retain provision for the alternate power of the Court to act in appointing or substituting inspectors where there are no inspectors or the inspectors fail to act. This was provided for in Section 84 (8) of Senate Bill L-11.

Duties of Inspectors—Section 82 (13)

It is impractical, as provided in Section 82 (13) to require Inspectors to verify bank balances, audit accounts, etc., and it would be difficult to obtain the services of Inspectors if they are to be required to discharge the responsibilities laid upon them by this sub-section. For these reasons the sub-section should be enabling rather than mandatory in form and to that end the word "shall" in the first line should be replaced by the word "may".

Inspector's Fees—Section 82 (15)

The scale of fees for Inspectors set by Section 82 (15) is inadequate in general and in particular respecting large estates where the services of the Inspectors are frequently of great value, but are not in the nature of the special service which at present can be suitably remunerated by the Court. The scale of fees should be doubled and coupled with provision for the Court increasing the Inspector's fees to larger amounts both in respect to special services and ordinary services, where the value of the ordinary services merits remuneration higher than that provided in the scale.

Scheme of Distribution

Claims Resulting from Injuries to Employees—Section 95 (1) (i)

Section 95 (1) (*i*) places in the ninth priority claims resulting from injuries to employees of the bankrupt to which the provisions of any Workmen's Compensation Act do not apply, but only to the extent of monies received from persons or companies guaranteeing the bankrupt against damages resulting from such injuries. Under the present Act, according to the explanatory note in the Bill, these claims stand in fourth priority. It is suggested that such claims continue to be given fourth priority by merging this subsection with subsection (*d*) relating to wages, salaries, etc.

Claims of Crown—Section 95 (1) (j)

There is no limitation of time placed on claims of the Crown under Section 95 (1) (*j*). The lack of this limitation is often prejudicial to creditors who after bankruptcy find that there are large claims by the Crown running back over several years of which they were unaware. Also, in the case of claims for income tax, the confidential regulations of the Income Tax Department would properly preclude creditors from finding out what, if any, tax

arrears may be owing by any person to whom they contemplate extending credit. In order to reduce this hazard to creditors to a reasonable limit, claims of the Crown in the right of Canada or any province under subsection (*j*) should be made subject to a two-year limitation, the same as municipal taxes under sub-sub-section (*e*).

Preferential Lien or Charge For Taxes Against Realty Not Affected—Section 95 (4)

Section 95 (4), after giving protection to preferential liens or charges against real property for taxes, provides that "any other preferential lien or charge against the property of the bankrupt created by statute is null and void and is entitled to rank as provided by this Act." This would appear to make null and void the preference as to mechanics' and woodsmen's liens and possibly other charges which are created by statute. The difficulty could be overcome as to mechanics' liens by redefining secured creditor in Section 2 (*s*) to make it clear that it includes the holder of a mechanic's lien.

Dividends

Copy To Be Sent to Superintendent Thirty Days Before Issue—Section 111 (3)

The requirement in Section 111 (3) that the trustee forward copies of the statement and dividend sheet to the Superintendent a least thirty days before mailing to creditors provides an unnecessarily long time period and will result in unnecessary delay in completing the administration of estates. The thirty day period should be reduced to ten days.

Notice of Final Dividend, etc.—Section 111(5)

The wording of Section 111(5) would be brought more in conformity with the sequence of practice if the words down to and including the word "three" in line three were revised to read—

> After the Superintendent has approved the statement and dividend sheet and the trustee's accounts have been taxed...

Unclaimed Dividends and Undistributed Funds—Section 113

Section 113(1) requires the trustee to forward to the Superintendent for deposit with the Receiver-General of Canada all unclaimed dividends and undistributed funds remaining in his hands before proceeding to his discharge. Owing to delays by creditors in cashing dividend cheques due to distance or for other causes, this provision will lead to serious delays in trustees applying for discharge and terminating the administration of estates. To avoid such delays, it is suggested that the trustee be allowed sixty days after discharge in which to forward unclaimed dividends to the Superintendent. This would compare with the six-months' period heretofore allowed for this purpose under Section 82 of the present Act.

Examination of Bankrupt and Others

Examination To Be Filed—Section 121(3)

Section 121(3) does not carry forward into Senate Bill N the provisions of existing Section 138 requiring the debtor to answer questions even though his answers might incriminate him or expose him to civil liability. The elements of present Section 138 mentioned are considered necessary and for that reason retention of existing Section 138 of the Act in the place of Section 121(3) of the Bill is preferred. If Section 138 of the Act is retained, it will not be necessary to keep Section 125 of the Bill which is already provided for in Section 138 of the Act.

Penalty for Failure to Attend Meetings—Section 124

Section 124 of the Bill does not retain the features of Sections 135(1) and (2) of the Act which impose a penalty for refusing to make satisfactory answers to questions or to produce books, records, etc. upon examination. The elements of the present Sections mentioned are considered necessary and for that reason the wording of Sections 135(1) and (2) of the Act is preferred to the wording of Section 124 of the Bill.

Discharge of Bankrupts

Bankruptcy to Operate as Application for Discharge—Section 127(1)(2)

Section 127(1)(2) introduces an automatic discharge principle and places on the trustee the onus of obtaining an appointment for hearing the application for discharge. The estate should not bear the cost of the application. These provisions should be deleted and the Act left in its present state wherein the bankrupt is responsible for applying for his discharge.

While the automatic discharge principle is not favoured, value is seen in that part of Section 127 which makes provision for the Trustee filing a report, as provided for in Section 128, so that the information contained in such report will be on record in the Court whenever the bankrupt may apply for his discharge. Copies of the report should be served on the debtor and filed with the Superintendent.

In any event, if Section 127 stands, corporations should be excepted from its operation. Owing to so very few corporations ever taking steps for their discharge, the procedure required would be completely unnecessary in nearly all cases. Also, if Section 127 stands, provision should be made in it for old debtors getting their discharge.

Power of Court to Annul Bankruptcy—Section 138

Section 138 should contain provision for the Court annulling a bankruptcy upon filing a bond or payment into Court in satisfaction of the debt, along the lines of Section 140(3) of Senate Bill L-11.

Courts and Procedure

Courts Vested with Jurisdiction—Section 140(1)(e)

The High Court of Justice in Ontario is only a branch of the Supreme Court of Ontario. Therefore, the reference in Section 140(1)(e) should be to the Supreme Court of Ontario. See the Judicature Act R.S.O. 1937, Chap. 100, secs. 1-3.

Authority of Courts

Trial of Issues, etc.—Section 144(8)

Under Section 83(1) claims respecting damages arising from tortious acts will be provable in bankruptcy. The rights to trial by jury now existing respecting such causes of action should be preserved. To that end the words "with or without jury" should be inserted in Section 144(8) after the word "tried in line one.

Powers of Registrar

(1) The wording of Section 149(1)(h) is related to the original intention in the revision of the Act to have claims dealt with directly by the Court. As that intention has been discarded, the wording is not appropriate and should be changed back to that of Section 159(i) of the present Act under which the

Registrar has power to hear and determine any appeals from a decision of a trustee allowing or disallowing a creditor's claim where such claim does not exceed five hundred dollars.

(2) Section 149(1)(i) should be expanded to enable the Registrar to deal with the remuneration of the trustee.

Appeals

Court of Appeal—Section 150

Section 150 makes an appeal from a Judge of the Court to the Court of Appeal dependent upon obtaining leave to appeal from a Judge of the Court of Appeal. Section 74(1) of the existing Act gives an appeal to the Court of Appeal as of right. The wording of the present section should be retained.

Stay of Proceedings on Filing of Appeal—Section 152

In conformity with the recommendation respecting Section 150 the words "where a judge has granted leave to appeal" should be deleted from Section 152.

Legal Costs

Limitation of Costs—Section 155(7)

In computing the 10 per cent of gross receipts to determine the maximum amount of legal costs under Section 155(7) amounts paid to secured creditors should not be deducted. Frequently, the handling of secured creditors' claims causes legal work and consequently this item should not be deducted in computing the maximum of legal fees. As legal costs are always controlled by legal tariffs, protection is afforded by this control over legal costs.

Bankruptcy Offences

Bankruptcy Offences—Section 156,
Duties of Bankrupt—Section 117

Upon comparison of Section 117, Duties of Bankrupts, and Section 156, Bankruptcy Offences, both of the Bill, with Section 191 of the Act it appears that Section 191 sub-sections (d), (e), (l), (n) and (o) have not been carried into the Bill. These sub-sections deal with specific offences which are not directly covered by the broader language employed in Sections 117 and 156 of the Bill. Owing to the technical position taken by the Courts in criminal charges under bankruptcy offences, there is apprehension that the general wording of Sections 117 and 156 will be found insufficient to cover the particular offences dealt with in the sub-sections mentioned. Consequently, it is considered that the provisions of Section 191 sub-sections (d), (e), (l), (n) and (o) should be carried forward into the Bill. For the same reason elements in Section 191 sub-sections (f), (m), (p), (q) and (v) which have not been carried into Section 156 sub-sections (d) and (f) should be carried into those sub-sections. An example of what is in mind is the omission of "other frauds" in Section 191(m) in the Act from the provisions of Section 156 of the Bill.

It is noted that Sections 117 and 156 of the Bill have been reworded so as to involve the matter of intent in the act constituting the offence. Consequently it is not necessary in these Sections to include a statement requiring proof of intent. However, Section 117 (*f*) (disposition of property within previous year and (*g*) (Gifts and Settlements) do not appear to have been so worded as to provide for the proof of intent. Consequently, it would be possible for a bankrupt without fraudulent intent to come within the meaning of these sub-sections. To avoid any injustice, Section 117 sub-sections (*f*) and (*g*) should be revised as may be necessary to include the question of intent.

Also, attention is drawn to Section 157 (1) (*c*) of the English Act quoted opposite to page 95 of the Bill which makes it an offence for a bankrupt to fail to give a satisfactory explanation of the manner in which loss was incurred. It is considered that such a provision should be written into the bankruptcy offences under the Canadian legislation.

Undischarged Bankrupt Getting Credit—Section 157

Upon conviction the Court is only empowered to sentence to imprisonment. This appears unduly severe and it is considered that the Court should have an alternate penalty by fine which it could impose in cases where it felt the situation would be met better by a fine than by imprisonment.

Unlawful Transactions—Section 159 (3)

Section 159 (3) limits the Courts sentence on conviction to imprisonment. Here, too, the Court should have an alternate punishment by way of fine to impose in circumstances where it feels a fine would be preferable to imprisonment.

Sections of Present Act Not Included in Senate Bill N

The following provisions of the existing Act do not appear to have been specifically included in Bill N. While it may be that in some cases they are covered by the wording of new sections or are to be provided for in rules yet to be drafted, attention is drawn to them as provisions which it is important to retain.

Sections of Existing Act

Section 9 (7)—Assignments

The Act should contain a provision corresponding to Section 9 (7) of the present Act under which every assignment of property, other than an authorized assignment made by an insolvent debtor for the general benefit of creditors, shall be null and void. Such a section is needed to cope with assignments prejudicial to the interests of creditors.

Section 33—Correction of Mistakes by Court

The bankruptcy legislation should continue to retain provisions along the lines of those in Section 33 of the present Act which enable the Court to correct mistakes, defects or imperfections in authorized assignments or receiving orders or proceedings connected therewith and prevent any creditor taking advantage of mistakes, etc.

Section 80—Bankruptcy of Partner

Section 103 of the Bill applies where both partners of a partnership are in bankruptcy, but does not make a specific provision for the case where only one partner is bankrupt. Section 80 of the present Act, which covers the situation where only one partner is bankrupt, accordingly should be carried forward into the new Bill.

Section 149—Order of Discharge, Evidentiary Value

The Bill should contain a provision along the lines of Section 149 of the present Act settling the evidentiary value of an order of discharge and, in particular, covering the point that such an order shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein. The bankrupt can then plead the order of discharge in respect to proceedings founded on causes of action, which occurred before his discharge.

Section 153—Application of Winding-Up Act

Section 153 of the existing Act has apparently been omitted by mistake. Its continued retention is necessary to carry out the underlying intention that the Bankruptcy Act shall apply to all insolvent companies but that in special cases the Court can grant leave to take proceedings under the Winding-Up Act.

Supplementary Recommendations

In addition to the recommendations mentioned above, there are a number of further recommendations listed in the attached list of Supplementary Recommendations. They deal with matters of lesser importance, phraseology and legal clarification. While the Board feels that if adopted they would help improve the Bill, it does not consider that their import is great enough to justify taking up the time of the Senate Committee which would be required to present them verbally.

Respectfully submitted,

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LIST OF SUPPLEMENTARY RECOMMENDATIONS RESPECTING BANKRUPTCY LAW REVISION

Interpretation

Corporations—Section 2 (f)

Persons—Section 2 (m)

Section 2 *(f)*, which defines "Corporation" for the purpose of becoming a bankrupt, excludes from the Act building societies having capital stock, incorporated banks, savings banks, insurance companies, trust companies, loan companies or railway companies.

Section 2 *(m)*, which defines "Person" for the purpose of becoming a creditor, includes "corporation" without modification of the exclusion under Section 2 *(f)*. Consideration should be given to the danger of the exclusions in 2 *(f)* preventing the excluded corporations and companies from establishing their claims as creditors in bankruptcies under the Act. If it is considered that there is such a danger, appropriate revision should be made.

When Proposals Deemed to be Accepted—Section (2) (1) (t)

It is desirable that the present basis of voting on proposals, under which "majority of claims" means voting power exclusive of claims under $25.00, should be retained. In order to ensure the retention of this basis and to clarify wording, the words "in number" in the second line of Section 2 (*t*) should be replaced by the words "of votes as defined by Section 83."

Administrative Officials

Superintendent

Duties of Superintendent—Section 3 (3) (g)

The requirement in Section 3 (3) (*g*) for the Superintendent examining trustees' accounts of receipts and disbursements and final statements should be made permissive rather than mandatory, as presently stated in the section.

Superintendent May Intervene—Section 3 (4)

Under Section 3 (4) the Superintendent is given power to intervene in any matter or proceeding in Court. While it is recognized that such authority follows Section 3 (2), which charges the Superintendent with supervision of the administration of all estates to which the Act applies, it is considered that a Court should not be placed in a position in which it cannot control the proceedings

for which it is responsible. Consequently the Superintendent's intervention should be by leave of the Court. The words "or proceedings in Court as he may deem expedient" should be deleted and replaced by the words "by leave of the Court."

Duties and Powers of Trustees

Duties of Trustee—Section 8 (2)

Section 8 (2) adds to the duties of the trustee taking possession of "records" as distinguished from deeds, books and documents. It would appear that "the records" contemplated would include material sometimes of substantial bulk, but only used for a limited time. Consequently, care should be taken that the provisions of present Rule 128, which place a time limit on the obligation of the trustee to keep such material, should be carried forward. Otherwise, trustees will be under a legal obligation to provide a large amount of storage space for material which in most cases has not a long term value.

Moneys to be Deposited in Bank—Section 9 (4)

It is impractical as in Section 9 (4) to require the trustee to make all payments by cheque drawn on the estate account. Moreover, cheques are not legal tender and can be refused by a payee.

Books and Records—Section 9 (7)

Section 9 (7) as presently stated would oblige the trustee to surrender his original records on a change of trustee or on the administration being taken over by the Official Receiver, following which he would be without the means of answering enquiries or protecting himself. This subsection should be dropped as the situation it is intended to deal with is met under the present practice of trustees passing their accounts.

Duties of Trustee on Expiration of Licences or Renewal—Section 9 (13) Material to Official Receiver

There is concern lest the provision, that pending the appointment of a trustee, following expiration of the license of a former trustee or his removal, the property, books, records and documents be forwarded to the Official Receiver may result in a volume of material being sent to Official Receivers which they have not facilities to receive and handle. As the present procedure, which has not any such requirement, has worked satisfactorily for many years, it is suggested that the feature mentioned be eliminated by deleting from Section 9 (13) the words "or pending the appointment of a trustee to the Official Receiver", where they appear in lines 8 and 9.

Time Limit for Preparation of Statements

The ten-day period allowed the trustee in Section 9 (13) for preparing and forwarding to the Superintendent a detailed financial statement is inadequate and should be increased to thirty days.

Debts Deemed to be Debts of Estate—Section 11 (4)

Section 11 (3) provides for creditors or inspectors by resolution limiting the amount of obligations that may be incurred, the advances that may be made or money that may be borrowed by the Trustee and the period of time during which the business of the bankrupt may be carried on by the trustee. Section 11 (4) should be restricted to liabilities incurred in accordance with Section 11 (3) so that the Trustee will not be free of liability where he has not complied with Section 11 (3).

Trustee May Apply to Court for Direction—Section 12 (2)

Section 12 (2) provides that where an estate has not been fully administered within three years after the bankruptcy the Trustee shall so report to the Court within six months thereafter and the Court shall make such order as it may see fit to expedite the administration. In order to complete the effectiveness of this Section, it should be amplified to provide that if the Trustee does not so report any Inspector or creditor may so report to the Court.

Redirection of Bankrupt's Mail—Section 13

Section 13 makes the redirection of a bankrupt's mail to the trustee a matter for a Court order. It is considered unnecessary to go to this expense when the same object could be achieved by service on the Postmaster of a certified copy of the trustee's appointment. The Section should be revised on the basis of service of the certified copy being effective for a three months' period and only requiring a court order in those cases where it is considered necessary that the bankrupt's mail should be redirected to the trustee for more than such three months' period.

Discharge of Trustee

Disposal of Unrealizable Property—Section 18 (1)

Section 18 (1) provides for return to the bankrupts, with the permission of Inspectors, of property remaining and not considered realizable at the time of the trustee's discharge. It is appreciated that the intention of this Section is merely to return to the bankrupt small items of property of unrealizable value at the time the estate is closed. However, in practice numerous instances are encountered in which property, not realizable at the time of the trustee's discharge, is realized later at a substantial value. Examples of this are found in mines, real estate equities and in stocks and shares. Where such a development occurs, creditors should benefit. Also, there is some apprehension that introduction of a principle enabling return of property to the bankrupt will lead to abuse. Moreover, it would seem that any such return would be impractical as, if returned assets did acquire value, they would besome after-acquired assets which the trustee should take back under his control.

If Section 18 (1) stands in its present form, assets vested in the trustee by the bankruptcy are returned to the bankrupt without any procedure for revesting title back in the bankrupt. Consequently a procedure to revest the title of such assets in the bankrupt should be provided so that the bankrupt will be in a position to make title to them.

Effect of Discharge of Trustee—Section 19 (8)

Section 19 (8) discharges the trustee from all liability respecting administration of the property of the bankrupt or his conduct as trustee on receiving his discharge, which may be revoked only on proof that it was obtained by fraud or by suppression or concealment of any material fact. This would not protect creditors against innocent errors of the trustee. In order to give creditors protection against material errors of trustees the words "or for any other sufficient reason" should be added at the end of the subsection.

Petition for Receiving Order

"File" and "Present"—Section 21

The word "file" should be changed to "present" throughout Section 21 as the word "present" more accurately describes the proceedings under the section.

Staying Proceedings Where Facts Alleged in Petition are Denied—Section 21 (10)

The wording of Section 21 (10) purports to authorize the Bankruptcy Court to deal with denials of the truth of any of the facts alleged in the petition. This carries the Bankruptcy Court beyond its jurisdiction in respect to determination of the debt in whole or in part. The wording of the subsection should be revised to state the Bankruptcy Court's jurisdiction correctly. This can be done by deleting the words "the truth of the facts alleged in the petition" and replacing them by the words "that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him". In conformity with this change the word "issue" in the last line should be changed to "question" and the words "disputed facts" in the same line changed to "debt".

Costs of Petition—Section 23

The benefits of the action taken by the petitioning creditor accrue to all creditors. Therefore, when a receiving order is made the costs of the petitioning creditor should in all cases be a charge against the estate and not against the petitioning creditor. Section 23 should be revised in conformity with this view by striking out the last five words in ss. (1) and deleting ss. (2).

Interim Receiver

Powers of Interim Receiver—Section 24 (2)

Section 24 (2) does not confer on an Interim Receiver the powers to carry on the business of a bankrupt conferred on him by Section 5 (2) of the present Act. This power to carry on business should be carried forward, particularly to enable the Interim Receiver to deal with cases where the business of the bankrupt should be carried on but the bankrupt is unwilling to carry it on. It would be preferable to replace Section 24 (2) by the words in Section 5 (2) of the present Act, with the closing words of the latter section revised to read—

> or carry on the business of the debtor for such period and on such terms as the Court may deem advisable.

Proposals

Creditor May Assent or Dissent by Letter—Section 30

In conformity with the recommendation that a subsection (*g*), to provide for a form of voting letter, be added to Section 28 (1), the word "voting" should be inserted before the word "letter" in line two of Section 30.

Priority of Claims—Section 48 (4)

The intention of Section 34 (4) would be expressed more clearly if the words following "which" in line seven were revised to read "any person other than the trustee is to collect and distribute".

Part IV

General Provisions

Effect of Bankruptcy on Seizure of Property for Rent and Taxes—Section 42 (4)

To avoid any confusion concerning Section 42 (4), Effect of Bankruptcy on Seizure of Property for Rent and Taxes, operating apart from the trustee initiating action under it, the words "at the request of the trustee and" should be inserted after the word "shall" in line two.

Persons Claiming Property in Possession of Bankrupt Must File Proof of Claim to Recover Section 50 (1)

To cover property which, while not in the possession of the bankrupt, is in his charge, the words "charge or" should be inserted before "possession" in line two. This retains the wording used in the corresponding section of the present Act.

How Claim Disposed of—Section 50 (2)

Subsection 50 (2) deals with the property of others which comes into the hands of the trustee. There would be circumstances in which it would be important to the owner to recover possession of his property sooner than the thirty day period allowed the trustee to admit the claim and deliver up possession or give notice of disputing the claim. The Court should have power to shorten the thirty day period in urgent circumstances. To provide the Court with such power the words "or within such time as the Court may direct" should be inserted after the word "later" in line 4.

Part VI

Duties of Bankrupt

Questionnaire

The form of the questionnaire which bankrupts are required to fill out should be revised to cover the particulars called for under Section 117 and to be applicable to corporations as well as individuals.

Examinations—Section 117(j)

Section 117 (j) should be clarified by the addition of the words "by the Trustee" at the end to clearly indicate who may examine.

Examination of Bankrupts and Others

Examination of Bankrupt by Official Receiver—Section 120 (1)

Section 120 (1) would appear to be impractial in requiring the Official Receiver to submit his report to the Superintendent, to the Trustee and to the Court at the first examination of the bankrupt. Where further investigation is required, an extended examination will be held subsequently. Accordingly, the following words in lines 8, 9 and 10 of the subsection should be deleted:—

> and a report of any facts or circumtances that in his opinion required special onsideration or further explanation or investigation

Arrest of Bankrupts—Section 126 (1)

Officers of Court

In order to provide for the rules defining the officers, such as sheriff to whom the Court may address a warrant, the word "prescribed" should be inserted before the word "officer" in line 2 of Section 120 (1).

Discharge of Bankrupt

Power of Court to Annul Bankruptcy—Section 138 (1)

Section 138 (1) omits the reference to the case of a debtor who had paid his debts in full which appears in Section 151 of the present Act and in Section 138 (3) of the Bill. This provision should be included in Section 138 (1).

Powers of Registrar

Action by Registrar—Section 149 (1) (L)

Section 149 (1) (L) should be amplified to enable the Registrar to act where the Inspectors failed to act as well as were there are no Inspectors.

Legal Costs

Limitation of Costs—Section 155 (7)

In computing the 10% of gross receipts to determine the maximum amount of legal costs under Section 155 (7) amounts paid to secured creditors should not be deducted. Frequently, the handling of secured creditors' claims causes legal work and consequently this item should not be deducted in computing the maximum of legal fees. As legal costs are always controlled by legal tariffs, protection is afforded by this control over legal costs.

Public Judicial Notice—Section 166 (4)

Public Judicial Notice—Section 166 (4)

Should not Section 166 (4) contain words to the effect "and shall have effect as being enacted by this Act" which appeared in Section 161 (3) of the existing Act?

Pending Proceedings

In order to provide for Pending Proceedings, consideration should be given to the need for including in the Canadian legislation provisions along the lines of Section 168 (2) and (3) of the United Kingdom Act:—

> 168 (2). This Act shall apply to proceedings under the Bankruptcy Acts, 1883 to 1913, pending at the commencement of this Act, as if commenced under this Act.
>
> (3)) Until revoked or altered under the powers of this Act, any fees prescribed and any general rules and orders made under the Bankruptcy Acts, 1883 to 1913, and the Bankruptcy (Discharge and Closure) Act, 1887, which are in force at the commencement of this Act, shall continue in force, and shall have effect as if made under this Act.

Sections of the Present Act Not Carried Forward in Senate Bill N

The following sections of the present Act do not appear to have been specifically included in the provisions of Senate Bill N. While it may be that in some cases they are covered by the wording of new sections, or are to be provided for in the rules yet to be drafted, attention is drawn to them with notations as to the advisability of their retention.

Sections of Existing Act—Section 2 (v) Definition of Judge

In the interest of certainty concerning reference to judges it is adviseable to retain a section similar to Section 2 (v) of the present Act which states "the 'Judge' means a judge of the Court which is by this Act invested with original jurisdiction in bankruptcy".

Section 18 (3)—Compositions, Extensions or Schemes of Arrangements

It is desirable that the Act continue to contain a section along the lines of Section 18 (3) of the present Act under which the acceptance by a creditor of a composition, extension or scheme shall not release any person who under the Act

would not be released by an order of discharge if the debtor had been adjudged bankrupt. This completes Section 37 (2) of the Bill by providing againts release of the person as well as against release of the debt or liability as stated in Section 37 (2).

Section 19 (4)—Debts Between Composition and Subsequent Ajudication of Bankruptcy

Section 38 of the Bill does not appear to provide for proving debts arising between the approval of the composition and a subsequent adjudication of bankruptcy. For this reason the provisions of Section 19 (4) of the present Act, which so provides, should be retained. Query—is this covered by Section 85 of the Bill?

Section 20 (7)—Secret Arrangements

It is advisable to retain in the Act specific provision that no secret arrangement shall be made with any creditors or shareholders to induce them to participate in a proposal. This offence does not appear to be specifically covered in Section 163 and it is desirable that it be specifically covered in view of the technical position taken by Courts in criminal prosecutions.

Section 30—Registration of Receiving Orders and Assignments

The provisions of Section 30 of the existing Act which enable a creditor to apply for registration and other necessary steps in connection with a receiving order and assignment, when the trustee has failed to make the necessary applications, should be carried forward into the new Bill.

Section 62 (3)—Definition of "Settlement"

At the present time a definition of a "settlement", in connection with the sections relating to Settlements and Preferences, does not appear in the Bill. Section 62 (3) of the present Act which states that for the purpose of the Sections concerned settlement shall include any conveyance or transfer of property should, therefore, be incorporated in the Bill.

Section 141 (6)—Reading Examination of Bankrupt in Court

The Bill does not appear to make provision for the Court reading the examination of a bankrupt or assignor at the hearing of applications and putting further questions to him and receiving further evidence as it thinks fit. Accordingly, Section 141 (6) of the present Act which so provides should be incorporated in the Bill.

Section 161 (2)—Application of Bankruptcy Rules re *Corporations and The Winding Up Act*

It is necessary to retain legislative provision, as in Section 161 (2) of the existing Act, making the bankruptcy rules applicable to proceedings under the Winding Up Act. Wording, however, should be clarified.

Section 163 (1), (3), (4), (5) and (6)—Bankruptcy Proceedings

Section 163 (1), (3), (4), (5) and (6) of the existing Act confers on Courts certain routine powers which courts should continue to have power to exercise.

Section 168—Proceedings by and against Partners, One of Whom is Bankrupt

The provisions of Section 168 of the present Act should be retained to provide a legal basis for proceedings by or against a partnership in its firm name.

Section 169—Contracts with Bankrupts

It is desirable to keep the provisions of Section 169 of the present Act so that where one of joint contractors is bankrupt the other joint contractor or contractors may sue or be sued without joining the bankrupt in the proceedings.

Section 181—Affidavits

The Act should continue to contain a statement of the legal basis for affidavits along the line of present Section 181.

Section 184—Computation of Time

It is desirable to keep provisions governing computation of time along the line provided for in present Section 184.

Section 185—Service of Notices and Documents

Without carrying Section 185 of the existing Act forward, there would not be a legal basis for service of notices and documents by registered mail.

Section 190—Power of Court to Permit Consent or Approve

There should continue to be provisions as in existing Section 190 for the Court to act when bodies with alternate authority do not act within a reasonable time.

Advertising of Proceedings under Bankruptcy Act

Attention is directed to a study now being made by the Law Society of Upper Canada of the possibility of arranging for the publication in one block of different types of notices of legal proceedings and to suggest that consideration might be given to developing the time limits prescribed under the various Sections of the Bankruptcy Act so that it would be possible to publish weekly in one block all notices of proceedings under the Bankruptcy Act required to be published in the press. The block of bankruptcy notices could then become one section of the block of legal notices contemplated by the Law Society. If such a scheme can be worked out, the effectiveness of publication will be greater as legal notices will then not be scattered throughout the paper but will be found regularly concentrated in one place.

APPENDIX "E"

TORONTO, February 25, 1949.

SUBMISSION OF THE CANADIAN CREDIT MEN'S TRUST ASSOCIATION LIMITED REGARDING SENATE BILL N, AN ACT RESPECTING BANKRUPTCY

The Canadian Credit Men's Trust Association Limited is an Association composed of Wholesale Merchants, Manufacturers and Financial Institutions interested in maintaining sound conditions in Mercantile Credit. It was incorporated by Dominion Charter in 1910 and operates throughout Canada with a membership of approximately 1,700.

The previous drafts of this Bill have received careful consideration by Committees composed of Wholesale Credit Managers. Representations have been received by the Association's Head Office from Committees at Vancouver, Calgary, Regina, Winnipeg, Toronto, Montreal and Saint John. Many of the proposals submitted have already been adopted in the bill now before the Senate.

It is desired to express appreciation of the consideration given by Mr. Robert Forsyth, K.C., Superintendent of Bankruptcy, and to congratulate him upon a number of features which if enacted will, it is believed, improve and expedite the administration of bankrupt estates.

The new Provisions contained in Part 3 of the Bill relating to Proposals should prove most helpful to deserving debtors who through circumstances beyond their control find it necessary to apply to their creditors for relief, either in the form of a general extension of time, a composition settlement, or a reorganization of their affairs. At present, except in the case of incorporated companies, such debtors, generally speaking, require to obtain the consent of *all* creditors to any such plan. The Association approves these Provisions and expresses the hope that they will be enacted.

The change in principle whereby the Custodian is eliminated and a Trustee appointed in the first instance is approved. This it is believed will tend to reduce costs and expedite administration.

The clarification of the priorities of the various classes of creditors as set out in Section 95, if enacted, will be of inestimable benefit.

The inclusion of a plan for summary administration of small estates, as provided in Sections 114-15-16, is considered to be desirable.

The Toronto Board of Trade is presenting its views on the Bill in considerable detail. Officials of The Credit Men's Association were privileged to be included in the personnel of the Board's Committee and took part in its deliberations. The recommendations made by the Board are all in accordance with the views of the Association and are endorsed by it. To avoid unnecessary repetition the Association refrains from commenting on most items, but does desire the privilege of touching briefly upon a few points which have not been dealt with and of placing emphasis on certain other features of the Bill.

Section 6—Sub-section (1): Substitution of Trustee by Creditors

This provides in effect that if the creditors desire to substitute another Trustee for the one appointed by the Court or the Official Receiver a "special resolution" is necessary. The definition of "special resolution"—Section 2 (*t*)—reads at follows: " 'Special resolutions' means a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present personally or by proxy at a meeting of creditors and voting on the

resolution". It is hoped that this change from the present requirement of a simple majority of votes will be adopted. Trafficking in estates by Trustees is to be deplored. It is not practised generally but there are a limited number of Trustees who from observation appear to make a business of piracy. There are of course occasions when, for good and sufficient reasons, creditors desire to appoint a Trustee other than the party who under the present procedure is appointed Custodian. If the reasons are sufficiently strong it is probable that the majority required by a "special resolution" will be available to remove the Trustee and appoint another, but the necessity for a "special resolution" will tend to discourage those who for no good reason, except to secure business for themselves, attempt to take the business from those to whom it has been entrusted.

Section 8—Sub-sections (14) and (15): Duties of the Trustee regarding Returns: Trustee not required to make Returns

This is a new Provision and it is urged that it be enacted in justice to wage earner creditors, others ranking in priority to the Crown, and to ordinary creditors who do not have any preference or privilege in respect of their claims. Under the present procedure the Trustee is required to file all sorts of Returns which should have been filed by the bankrupt. This applies even if there is no possibility of funds being available to make any payment on Crown claims. The expense of making such Returns falls on the creditors mentioned. If the net realization is insufficient to pay wage earners or other prior creditors in full they suffer. In other cases dividends available for ordinary creditors are reduced. Trustees should only be required to make records available to representatives of Taxing Authorities to enable them to establish their claims. Unless these Sub-sections are enacted, and the Trustee is still required to file Returns, it is suggested that as an alternative there be a provision authorizing Trustees to deduct from amounts payable on claims established by the Returns the cost of preparing them.

Section 9—Sub-section (1): Trustees shall insure property

It is urged that in view of the many forms of insurance which may be considered as applicable to estate assets this Sub-section should definitely be clarified by restricting the requirement to Fire Insurance, except upon instructions of the Inspectors when appointed. This would seem to be most important for the protection of the Trustee.

Section 21—Sub-section (1) (a): Conditions under which Creditors may petition for a Receiving Order

At present if a debtor has committed an act of bankruptcy creditors having a claim of $500 or over may file a petition to have the debtor adjudged bankrupt. The Bill steps up this amount to $1,000. Section 26—Sub-section (1) of the Bill provides that an "insolvent person" may make an involuntary assignment. The definition of "insolvent person"—Section 2 (*j*) is one who among other things has total liabilities of not less than $1,000. The present Act sets the figure at $500. It seems reasonable that unless a debtor owes at least $1,000 all told he should not be permitted to make use of The Bankruptcy Act, but it does not seem appropriate that a single creditor must have a *claim* of $1,000 before he can petition his debtor into bankruptcy. The $500 minimum for the filing of a petition has applied since The Bankruptcy Act came into force. In latter years terms of sale have been shortened and liabilities to trade creditors do not accumulate to the same extent as formerly, so there does not seem to be any good reason for increasing the amount on which a petition may be filed. Creditors are usually very loth to file petitions until every other recourse has failed, and they do so only for the purpose of bringing about an equitable distribution of the debtor's assets. Debtors who are honestly trying to pay their debts and are

making any progress do not have anything to fear in this connection. It is, however, submitted that a creditor should not be deprived of the protection which The Bankruptcy Act affords him just because his debtor owes him less than $1,000. $500 seems to be a reasonable minimum and it is urged that this figure be retained.

Section 82—Sub-section (13): Duty of Inspectors

This Sub-section among other things requires the Inspectors to verify the Bank balance and audit the Trustee's accounts. It is agreed that every reasonable precaution should be taken to safeguard the interests of creditors, but it hardly seems necessary to impose upon the Inspectors the duties of auditors. Frequently Inspectors are appointed who do not reside in the locality of the Trustee. Even local Inspectors would be very loth to devote the time necessary to work of this nature, and it is felt that any such requirement will almost certainly be ignored in the majority of cases. Trustees are bonded in each estate in addition to the general bond which is held by the Superintendent. It is suggested that this particular feature be eliminated from Sub-section (13).

Section 82—Sub-section (15): Inspectors Fees

It is noted that the Bill provides a slight increase in the fees to be paid Inspectors. This is approved, but it is felt that the fee of $3 per meeting in estates realizing less than $10,000 is inadequate and should be raised to $5. Even this would not be adequate if Inspectors were called upon to perform the duties imposed by Sub-section (13) already discussed. A large percentage of estates do not realize as such as $10,000.

Section 95—Sub-section (1) (j): Scheme of Distribution: Claims of the Crown

This Sub-section provides that all claims of the Crown rank *pari passu* after all other preferred claims but before the claims of ordinary creditors. There can be little quarrel with this, but it is submitted that Crown claims arising more than two years prior to the bankruptcy should not be admissible. This provision applies to Municipal tax claims in Sub-section (1) (e). In some estates Crown claims extend back for years, and when after long delay the amounts are determined, payment of them takes all the remaining money in the estate. This means that trade creditors and others in the ordinary class get nothing. It is perhaps overlooked that it is the fact of trade creditors having supplied goods on credit which has made it possible for the debtor to carry on business and incur debt for taxes. This means that the Crown eventually receives tax money which would otherwise not exist. If the Crown claims were void beyond the two year period in the event of bankruptcy it is reasonable to suppose that greater efforts would be made to keep collections more nearly up to date.

Section 113: Unclaimed dividends

At present Trustees are allowed six months after distribution of the proceeds of the estate to forward to the Receiver General the proceeds of cheques which have not been cleared and any other unclaimed funds—Section 82 of the Act. Section 113 of the Bill requires that all such funds be sent to the Receiver General before the Trustee proceeds to his discharge. Sub-section (5) (c) of Section III of the Bill requires the setting of the date of Trustee's application for discharge when he issues the Final Statement and Notice of Dividend. It would hardly be practicable or desirable to set a date for discharge several months ahead. In practice it is found frequently that creditors do not cash their cheques for some time, and this of course applies in respect to creditors in other countries. Accordingly under the procedure proposed in Section 113 it is probable that there will be many outstanding cheques at the time of the discharge application, on which the Trustee will be required to stop payment and to forward the funds to the Receiver General. This will be the cause of annoyance to creditors and unnecessary trouble to the Trustee and the Department of the Receiver General.

The time at present allowed for clearing dividend cheques, six months, may be too long, but surely two or three months might be permitted under the same conditions as now apply. As previously mentioned, Trustees are amply bonded for the faithful performance of their duties.

Sections 127 and 128: Discharge of Bankrupt

These Sections establish a new principle which it is submitted should receive careful consideration. The provisions of Section 128 requiring the Trustee to prepare and file with the Court a report on the affairs of the bankrupt before he applies for his discharge is certainly a step in the right direction. Under the present procedure the report is not prepared until the bankrupt makes an application for his discharge. This may be years after the estate is closed and the Trustee may not be available, or a good deal may have been forgotten. It is, however, very questionable whether an application for discharge should in all cases other than corporations be made within twelve months after the bankruptcy. Many estates cannot be brought to a finality within that period, for various causes, such as litigation, disposal of fixed assets, collection of receivables, determination of Crown claims, etc. When the Trustee makes his report he should be in a position to report fully on the affairs of the bankrupt and on his conduct throughout the administration. This is in the interest of the bankrupt himself.

Another point which is worthy of consideration is that apart from the excepted cases referred to in Sub-sections (3) and (4) of Section 127, it would appear that all costs incurred in procuring a discharge for the debtor are to be paid out of the funds of the estate. This means that creditors pay. It may be ordinary trade creditors, the Crown, wage earners, or others, depending upon how far the funds of the estate will go in settling liabilities. It may even come out of the pocket of the Trustee, as some estates do not produce enough revenue after payment of secured claims to take care of the costs of administration. The duty of the Trustee, as described in these Sections, seems to be obligatory whether funds are available or not, and there is no provision for the payment of any special fee for their performance such as he now receives from the bankrupt upon an application made by him. It is submitted that if the principle of Sections 127 and 128 is adopted it should include a provision whereby the bankrupt will be required to pay the costs and a reasonable fee, subject to taxation.

Question arises as to what the procedure will be in respect to bankrupts whose estates have been administered prior to the revised Act coming into force and who have not made application for discharge.

Section 142: Assignment of Judges to Bankruptcy work by Chief Justice:

There does not appear to be any material change from the present procedure, which works in a very satisfactory manner in those provinces where Judges are assigned specifically to bankruptcy work. In certain provinces, however, this has not been done and the experience is that this is a serious disadvantage. Bankruptcy administration is specialized business and it is a great advantage if Court Cases can be brought before a Judge who through continuous experience becomes thoroughly familiar with it. Creditors and others in certain quarters feel rather strongly on the subject and it is hoped that it may be found desirable to bring about a change by a slight amendment to this Section or through other means.

Section 157: Failure of Bankrupt to disclose the fact of being undischarged

It is submitted that the penalty of imprisonment without the option of a fine is unnecessarily harsh and should be modified.

Respectfully submitted,

THE CANADIAN CREDIT MEN'S TRUST ASSOCIATION LIMITED.
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